TITLE 18—CRIMES AND CRIMINAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 645, 62 Stat. 683

TITLE REFERRED TO IN OTHER TITLES

This title is referred to in title 48 section 1694.

PART I—CRIMES

Chap.		Sec.
110.	Sexual Exploitation of Children	2251
114.	Trafficking in Contraband Cigarettes.	2341

AMENDMENTS

1978—Pub. L. 95-575, § 2, Nov. 2, 1978, 92 Stat. 2465, added item 114.

Pub. L. 95-225, § 2(b), Feb. 6, 1978, 92 Stat. 8, added item 110.

CHAPTER 1—GENERAL PROVISIONS

EXECUTIVE ORDER NO. 11534

Ex. Ord. No. 11534, June 4, 1970, 35 F.R. 8865, set out as a note preceding section 1 of this title in the main edition, which related to the National Council on Organized Crime, was revoked by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Title 5, Appendix, Government Organization and Employees.

§ 8. Obligation or other security of the United States defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2024; title 49 section 787.

CHAPTER 3—ANIMALS, BIRDS, FISH, AND PLANTS

§ 42. Importation or shipment of injurious mammals, birds, fish (including mollusks and crustacea), amphibia, and reptiles; permits, specimens for museums; regulations

EXOTIC ORGANISMS

For provisions relating to restrictions on the introduction of exotic organisms into natural ecosystems of the United States, see Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, set out as a note under section 4321 of Title 42, The Public Health and Welfare.

CHAPTER 7—ASSAULT

§ 111. Assaulting, resisting, or impeding certain officers or employees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 sections 84, 87c; title 16 section 742*l*; title 22 section 2667; title 42 section 2000e-13.

§ 112. Protection of foreign officials, official guests, and internationally protected persons

[See main edition for text of (a) to (d)]

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)).

[See main edition for text of (f)]

(As amended Nov. 9, 1977, Pub. L. 95-163, § 17(b)(1), 91 Stat. 1286; Oct. 24, 1978, Pub. L. 95-504, § 2(b), 92 Stat. 1705.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (e). Pub. L. 95-163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

CHAPTER 9—BANKRUPTCY

Sec.
151. Definition.
153. Embezzlement by trustee or officer.
154. Adverse interest and conduct of officers.
155. Fee agreements in cases under title 11 and receiverships.

AMENDMENTS

1978—Pub. L. 95-598, title III, § 314(b)(2), (d)(3), (e)(3), (f)(3), Nov. 6, 1978, 92 Stat. 2677, substituted in item 151 "Definition" for "Definitions"; struck from item 153 ", receiver" following "trustee" and from item 154 "referees and other" preceding "officers"; and substituted in item 155 "cases under title 11 and receiverships" for "bankruptcy proceedings".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3057 of this title; title 11 section 104.

§ 151. Definition

As used in this chapter, the term "debtor" means a debtor concerning whom a petition has been filed under title 11.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(b)(1), 92 Stat. 2676.)

AMENDMENTS

1978—Pub. L. 95-598 substituted "Definition" for "Definitions" in section catchline and definition of "debtor" as a debtor concerning whom a petition has been filed under title 11 for definition of "bankrupt"

as a debtor by or against whom a petition has been filed under title 11 and struck out definition of "bankruptcy" as including any proceeding, arrangement, or plan pursuant to title 11.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 152. Concealment of assets; false oaths and claims; bribery

Whoever knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or from creditors in any case under title 11, any property belonging to the estate of a debtor; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11; or

Whoever knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty or[1] perjury as permitted under section 1746 of title 28, United States Code, in or in relation to any case under title 11; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11; or

Whoever knowingly and fraudulently gives, offers, receives or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof, for acting or forbearing to act in any case under title 11; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against him or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information, including books, documents, records, and papers, relating to the property or financial affairs of a debtor; or

Whoever, after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court entitled to its possession, any recorded information, including books, documents, records, and papers, relating to the property or financial affairs of a debtor.

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(a), (c), 92 Stat. 2676, 2677.)

[1] So in original. Probably should be "of".

AMENDMENTS

1978—Pub. L. 95-598 substituted, wherever appearing, "debtor" for "bankrupt", "case under title 11" for "bankruptcy proceeding", and "provisions of title 11" for "bankruptcy law"; and substituted "a custodian" for "the receiver, custodian", wherever appearing, and "recorded information, including books, documents, records, and papers, relating to the property or financial affairs" for "document affecting or relating to the property or affairs", in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 153. Embezzlement by trustee or officer

Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his charge as trustee, custodian, marshal, or other officer of the court, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(a)(1), (d)(1), (2), 92 Stat. 2676, 2677.)

AMENDMENTS

1978—Pub. L. 95-598 struck out from heading ", receiver" following "trustee" and in text struck out "receiver," preceding "custodian" and substituted "debtor" for "bankrupt".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 154. Adverse interest and conduct of officers

Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a case under title 11; or

Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so—

Shall be fined not more than $500, and shall forfeit his office, which shall thereupon become vacant.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(a)(2), (e)(1), (2), 92 Stat. 2676, 2677.)

AMENDMENTS

1978—Pub. L. 95-598 struck out from section heading "referees and other" preceding "officers", and struck out from text "Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or" preceding "Whoever, being a" and "referee, receiver," preceding "custodian" and substituted "case under title 11" for "bankruptcy proceeding".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 155. Fee agreements in cases under title 11 and receiverships

Whoever, being a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or attorney for any such party in interest, in any receivership or case under title 11 in any United States court or under its supervision, knowingly and fraudulently enters into any agreement, express or implied, with another such party in interest or attorney for another such party in interest, for the purpose of fixing the fees or other compensation to be paid to any party in interest or to any attorney for any party in interest for services rendered in connection therewith, from the assets of the estate, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(f)(1), (2), 92 Stat. 2677.)

AMENDMENTS

1978—Pub. L. 95-598 substituted in the heading "cases under title 11 and receiverships" for "bankruptcy proceedings" and in the text "or case under title 11" for ", bankruptcy or reorganization proceeding", inserted "knowingly and fraudulently" following "supervision,", and deleted penalty provision for a judge of a United States court to knowingly approve the payment of any fees or compensation that were fixed.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.
207. Disqualification of former officers and employees; disqualification of partners of current officers and employees.

AMENDMENTS

1978—Pub. L. 95-521, title V, § 501(b), Oct. 26, 1978, 92 Stat. 1867, in item 207 struck out "in matters connected with former duties or official responsibilities" following "officers and employees" and inserted "of current officers and employees" following "partners of".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 1942, 2625; title 22 section 3622; title 43 section 1817.

§ 201. Bribery of public officials and witnesses

EX. ORD. NO. 11222. STANDARDS OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first par. and Part I*]

PART II—STANDARDS OF CONDUCT

SECTION 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

[*See main edition for text of (1) to (3)*]

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Office of Personnel Management, implementing the provisions of subsection (a) of this section and to provide for such exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions (1) governing obvious family or personal relationships where the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors—the clearest illustration being the parents, children or spouses of federal employees; (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employee may properly be in attendance; or (3) permitting acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans. This section shall be effective upon issuance of such regulations.

[*See main edition for text of (c)*]

SEC. 202. An employee shall not engage in any outside employment, including teaching, lecturing, or writing, which might result in a conflict, or an apparent conflict, between the private interests of the employee and his official government duties and responsibilities, although such teaching, lecturing, and writing by employees are generally to be encouraged so long as the laws, the provisions of this order, and Office of Personnel Management and agency regulations covering conflict of interest and outside employment are observed.

[*See main edition for text of Secs. 203 to 206; Part III*]

PART IV—REPORTING OF FINANCIAL INTERESTS

SECTION 401. (a) Not later than ninety days after the date of this order, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and each full-time member of a committee, board, or commission appointed by the President, shall submit to the Director of the Office of Personnel Management a statement containing the following:

[*See main edition for text of (1) to (3); (b) and (c)*]

SEC. 402. The Office of Personnel Management shall prescribe regulations, not inconsistent with this part, to require the submission of statements of financial interests by such employees, subordinate to the heads of agencies, as the Office may designate. The Office shall prescribe the form and content of such statements and the time or times and places for such submission.

[*See main edition for text of Sec. 403*]

SEC. 404. The Director of the Office of Personnel Management shall report to the President any information contained in statements required by Section 401 of this part which may indicate a conflict between the financial interests of the official concerned and the performance of his services for the Government. The Office shall report, or by regulation require reporting, to the head of the agency concerned any information contained in statements submitted pursuant to regulations issued under Section 402 of this part which may indicate a conflict between the financial interests of the officer or employee concerned and the performance of his services for the Government.

SEC. 405. The statements and amended statements required by or pursuant to this part shall be held in confidence, and no information as to the contents thereof shall be disclosed except as the Director of the Office of Personnel Management or the head of the agency concerned may determine for good cause shown.

[See main edition for text of Sec. 406; Part V]

PART VI—PROVIDING FOR THE PERFORMANCE BY THE OFFICE OF PERSONNEL MANAGEMENT OF CERTAIN AUTHORITY VESTED IN THE PRESIDENT BY SECTION 1753 OF THE REVISED STATUTES

SECTION 601. The Office of Personnel Management is designated and empowered to perform, without the approval, ratification, or other action of the President, so much of the authority vested in the President by Section 1753 of the Revised Statutes of the United States (5 U.S.C. 631) [now covered by sections 3301 and 7301 of Title 5] as relates to establishing regulations for the conduct of persons in the civil service.

[See main edition for text of Sec. 602]

PART VII—GENERAL PROVISIONS

SECTION 701. The Office of Personnel Management is authorized and directed, in addition to responsibilities assigned elsewhere in this order:

[See main edition for text of (a) to (c)]

SEC. 702. Each agency head is hereby directed to supplement the standards provided by law, by this order, and by regulations of the Office of Personnel Management with regulations of special applicability to the particular functions and activities of his agency. Each agency head is also directed to assure (1) the widest possible distribution of regulations issued pursuant to this section, and (2) the availability of counseling for those employees who request advice or interpretation.

SEC. 703. The following are hereby revoked:

[See main edition for text of (a) to (d)]

(e) The President's Memorandum of May 2, 1963, "Preventing Conflicts of Interest on the Part of Special Government Employees." The effective date of this revocation shall be the date of issuance by the Office of Personnel Management of regulations under Section 701(a) of this order.

[See main edition for text of Secs. 704 to 706]

§ 202. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 sections 209, 1457; title 22 sections 3507, 3508; title 26 section 4946; title 42 section 3188.

§ 203. Compensation to Members of Congress, officers, and others in matters affecting the Government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202, 205, 206 of this title; title 5 section 3374; title 12 section 1457; title 22 sections 3507, 3508; title 30 section 663; title 38 section 3402; title 42 sections 1314, 1975d, 3188; title 50 App. section 463.

§ 204. Practice in Court of Claims by Members of Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 3188.

§ 205. Activities of officers and employees in claims against and other matters affecting the Government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202, 206 of this title; title 5 section 3374; title 12 section 1457; title 22 sections 3507, 3508; title 25 section 450l; title 30 section 663; title 38 section 3402; title 41 section 120; title 42 sections 1314, 1975d, 3188; title 50 App. section 463.

§ 206. Exemption of retired officers of the uniformed services

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 202 of this title; title 38 section 3402; title 42 section 3188.

§ 207. Disqualification of former officers and employees; disqualification of partners of current officers and employees

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) in which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed and as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) as to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) the department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) in connection with any judicial, rulemaking, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) which is pending before such department or agency or in which such department or agency has a direct and substantial interest—

shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) at a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) on active duty as a commissioned officer of a uniformed service assigned to pay grade of O–9 or above as described in section 201 of title 37, United States Code; or

(C) in a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS–17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay O–7 or O–8, as described in section 201 of title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) an elected official of a State or local government, or

(B) whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions which are distinct and separate from the remaining functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government em-

ployee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than $5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

(As amended Pub. L. 95-521, title V, § 501(a), Oct. 26, 1978, 92 Stat. 1864; Pub. L. 96-28, June 22, 1979, 93 Stat. 76.)

REFERENCES IN TEXT

The Civil Service Reform Act of 1978, referred to in subsec. (d)(1)(C), is Pub. L. 95-454, Oct. 13, 1978, 92 Stat. 111. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 5, Government Organization and Employees, and Tables.

The Higher Education Act of 1965, referred to in subsec. (d)(2)(B), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Section 1201(a) of the Higher Education Act of 1965, is classified to section 1141(a) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 501(c)(3) of the Internal Revenue Code of 1954, referred to in subsec. (d)(2)(B), is classified to section 501(c) of Title 26, Internal Revenue Code.

The effective date of this Act, referred to in subsec. (j), probably means the date of enactment of Pub. L. 95-521, which was approved on Oct. 26, 1978.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-28, § 1, substituted "by personal presence at any formal or informal appearance" for "concerning any formal or informal appearance" in cl. (ii) of the provisions preceding par. (1), and, in par. (3), inserted "as to (i)," preceding "which was actually pending" and ", as to (ii)," preceding "in which he participated".

Subsec. (d). Pub. L. 96-28, § 2, designated existing provisions as par. (1), designated existing pars. (1) and (3) as subpars. (A) and (B) of par. (1) as so designated, and added subpar. (C) of par. (1) and par. (2), incorporating into the new par. and subpar. portions of former provisions relating to positions for which the basic rate of pay was equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of Title 5 and who had significant decision-making or supervisory responsibility, as designated by the Director of the Office of Government Ethics, in consultation with the head of the department or agency concerned, and provisions relating to the designation of positions by the Director of the Office of Government Ethics.

1978—Pub. L. 95-521 expanded section to include provisions designed to more effectively deal with the problem of the disproportionate influence former officers and employees might have upon the government processes and decision-making in their previous departments or agencies when they return in the role of representatives or advocates of nongovernmental groups or interests before those same departments or agencies.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 503 of Pub. L. 95-521 provided that: "The amendments made by section 501 [amending this section] shall become effective on July 1, 1979."

APPLICATION TO INDIVIDUALS WHO LEFT GOVERNMENT SERVICE PRIOR TO JULY 1, 1979

Section 502 of Pub. L. 95-521 provided that: "The amendments made by section 501 [amending this section] shall not apply to those individuals who left Government service prior to the effective date of such amendments [July 1, 1979] or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation."

CROSS REFERENCES

American Institute in Taiwan, employees in representing Institute to be exempt from this section, see section 3310 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 5 section 3374; title 12 section 1457; title 22 sections 3310, 3507, 3508, 3622; title 25 section 450i; title 29 section 308e; title 30 section 663; title 38 sec-

tion 3402; title 42 sections 1396a, 1975d, 3188, 7216, 7218; title 50 App. section 463.

§ 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment.

(As amended Pub. L. 95-188, title II, § 205, Nov. 16, 1977, 91 Stat. 1388.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-188, § 205(a), extended the conflicts of interest prohibition to a Federal Reserve bank director, officer, or employee.

Subsec. (b). Pub. L. 95-188, § 205(b), added sentence "In the case of class A and B directors of Federal Reserve banks, the Board of Governors of the Federal Reserve System shall be the Government official responsible for appointment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 2 section 702; title 5 section 3374; title 12 section 1457; title 22 sections 3507, 3508, 3622; title 28 App. section 302; title 42 sections 1396a, 1975d, 3188, 7218.

§ 209. Salary of Government officials and employees payable only by United States

[*See main edition for text of* (a) *to* (d)]

(e) This section does not prohibit the payment of actual relocation expenses incident to participation, or the acceptance of same by a participant in an executive exchange or fellowship program in an executive agency: *Provided,* That such program has been established by statute or Executive order of the President, offers appointments not to exceed three hundred and sixty-five days, and permits no extensions in excess of ninety additional days.

(As amended Pub. L. 96-174, Dec. 29, 1979, 93 Stat. 1288.)

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-174 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 2 section 162; title 5 sections 3102, 3343, 3374, 4111; title 7 section 2220; title 8 section 1353c; title 12 section 1457; title 22 sections 3507, 3508; title 30 section 663; title 42 sections 1314, 1975d, 3188; title 45 section 362.

§ 210. Offer to procure appointive public office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 211. Acceptance or solicitation to obtain appointive public office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 15—CLAIMS AND SERVICES IN MATTERS AFFECTING GOVERNMENT

§ 285. Taking or using papers relating to claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3622.

§ 287. False, fictitious or fraudulent claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457.

§ 291. Purchase of claims for fees by court officials

Whoever, being a judge, clerk, or deputy clerk of any court of the United States or a Territory or Possession thereof, or a United States district attorney, assistant attorney, marshal, deputy marshal, commissioner, or other person holding any office or employment, or position of trust or profit under the United States, directly or indirectly purchases at less than the full face value thereof, any claim against the United States for the fee, mileage, or expenses of any witness, juror, deputy marshal, or any other officer of such court, shall be fined not more than $1,000.

(June 25, 1948, ch. 645, 62 Stat. 699.)

CHANGE OF NAME

United States commissioners, referred to in text, were replaced by United States magistrates pursuant

to Pub. L. 90-578, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

CHAPTER 18—CONGRESSIONAL ASSASSINATION, KIDNAPING, AND ASSAULT

§ 351. Congressional assassination, kidnaping, and assault; penalties

REPORT TO MEMBER OF CONGRESS ON INVESTIGATION CONDUCTED SUBSEQUENT TO THREAT ON MEMBER'S LIFE

Pub. L. 95-624, § 19, Nov. 9, 1978, 92 Stat. 3466, provided that: "The Federal Bureau of Investigation shall provide a written report to a Member of Congress on any investigation conducted based on a threat on the Member's life under section 351 of title 18 of the United States Code."

CHAPTER 19—CONSPIRACY

§ 371. Conspiracy to commit offense or to defraud United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457; title 26 section 6531; title 42 section 3795b; title 50 App. section 18.

CHAPTER 23—CONTRACTS

§ 443. War contracts

Whoever willfully secretes, mutilates, obliterates, or destroys—

(a) any records of a war contractor relating to the negotiation, award, performance, payment, interim financing, cancellation or other termination, or settlement of a war contract of $25,000 or more; or

(b) any records of a war contractor or purchaser relating to any disposition of termination inventory in which the consideration received by any war contractor or any government agency is $5,000 or more,

before the lapse of (1) five years after such disposition of termination inventory by such war contractor or government agency, or (2) five years after the final settlement of such war contract, or (3) five years after 12 o'clock noon of December 31, 1946, whichever applicable period is longer, shall, if a corporation, be fined not more than $50,000, and, if a natural person, be fined not more than $10,000 or imprisoned not more than five years, or both.

The Administrator of General Services, by regulation, may authorize the destruction of such records upon such terms and conditions as he deems appropriate, including the requirement for the making and retaining of photographs or microphotographs, which shall have the same force and effect as the originals thereof.

The definitions of terms in section 103 of Title 41 shall apply to similar terms used in this section.

(June 25, 1948, ch. 645, 62 Stat. 704; Oct. 31, 1951, ch. 655, § 20(a), 65 Stat. 717.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 25—COUNTERFEITING AND FORGERY

§ 508. Transportation requests of Government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 3056 of this title; title 22 section 3622.

CHAPTER 29—ELECTIONS AND POLITICAL ACTIVITIES

Sec.
[591. Repealed.]
603. Place of solicitation.[1]
607. Making political contributions.[1]

AMENDMENTS

1980—Pub. L. 96-187, title II, § 201(a)(2), Jan. 8, 1980, 93 Stat. 1367, struck out item 591 "Definitions".

[§ 591. Repealed. Pub. L. 96-187, title II, § 201(a)(1), Jan. 8, 1980, 93 Stat. 1367]

Section, acts June 25, 1948, ch. 645, 62 Stat. 719; May 24, 1949, ch. 139, § 9, 63 Stat. 90; Sept. 22, 1970, Pub. L. 91-405, title II, § 204(d)(4), 84 Stat. 853; Feb. 7, 1972, Pub. L. 92-225, title II, § 201, 86 Stat. 8; Oct. 15, 1974, Pub. L. 93-443, title I, §§ 101(f)(2), 102, 88 Stat. 1268, 1269; May 11, 1976, Pub. L. 94-283, title I, § 115(g), title II, § 202, 90 Stat. 496, 497, defined terms applicable to prohibitions respecting elections and political activities.

EFFECTIVE DATE OF REPEAL

Section repealed effective Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

§ 594. Intimidation of voters

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 600. Promise of employment or other benefit for political activity

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 601. Deprivation of employment or other benefit for political contribution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

§ 602. Solicitation of political contributions

It shall be unlawful for—

(1) a candidate for the Congress;

(2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;

(3) an officer or employee of the United States or any department or agency thereof; or

(4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States to knowingly solicit, any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other

[1] So in original. Does not conform to section catchline.

such officer, employee, or person. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(As amended Pub. L. 96-187, title II, § 201(a)(3), Jan. 8, 1980, 93 Stat. 1367.)

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in par. (4), is classified to section 431(8) of Title 2, The Congress.

AMENDMENTS

1980—Pub. L. 96-187 completely revised the section to conform its terms to the revision of the Federal Election Campaign Act of 1971 by title I of Pub. L. 96-187.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 606 of this title; title 5 section 3374; title 12 section 1457.

§ 603. Making political contributions

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(As amended Pub. L. 96-187, title II, § 201(a)(4), Jan. 8, 1980, 93 Stat. 1367.)

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a), is classified to section 431(8) of Title 2, The Congress.

Section 302(e)(1) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 432(e)(1) of Title 2.

AMENDMENTS

1980—Pub. L. 96-187 substituted provisions relating to the making of political contributions for provisions relating to the place of solicitation.

EFFECTIVE DATE OF 1980 AMENDMENT

Amended by Pub. L. 96-187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 607 of this title; title 5 section 3374; title 12 section 1457.

§ 607. Place of solicitation

(a) It shall be unlawful for any person to solicit or receive any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 in any room or building occupied in the discharge of official duties by any person mentioned in section 603, or in any navy yard, fort, or arsenal. Any person who violates this section shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

(As amended Pub. L. 96-187, title II, § 201(a)(5), Jan. 8, 1980, 93 Stat. 1367.)

REFERENCES IN TEXT

Section 301(8) of the Federal Election Campaign Act of 1971, referred to in subsec. (a), is classified to section 431(8) of Title 2, The Congress.

Section 302(e) of the Federal Election Campaign Act of 1971, referred to in subsec. (b), is classified to section 432(e) of Title 2.

AMENDMENTS

1980—Pub. L. 96-187 substituted provisions relating to the place of solicitation for provisions relating to the making of political contributions.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.
665. Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations.[1]

AMENDMENTS

1978—Pub. L. 95-524, § 3(b), Oct. 27, 1978, 92 Stat. 2018, in item 665 substituted "employment and training funds" for "manpower funds" and inserted "; obstruction of investigations" following "improper inducement".

§ 641. Public money, property or records

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 section 1457; title 22 section 3622; title 40 section 491.

[1] So in original. Does not conform to section catchline.

§ 645. Court officers generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3622.

§ 646. Court officers depositing registry moneys

TRANSFER OF FUNCTIONS

All functions of all officers of the Department of the Treasury, and all functions of all agencies and employees of such Department, were transferred, with certain exceptions, to the Secretary of the Treasury, with power vested in him to authorize their performance or the performance of any of his functions, by any of such officers, agencies, and employees, by Reorg. Plan No. 26 of 1950, §§ 1, 2, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, 1281, set out in the Appendix to Title 5, Government Organization and Employees. The Treasurer of the United States, referred to in this section, is an officer of the Treasury Department.

§ 664. Theft or embezzlement from employee benefit plan

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use or to the use of another, any of the moneys, funds, securities, premiums, credits, property, or other assets of any employee welfare benefit plan or employee pension benefit plan, or of any fund connected therewith, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

As used in this section, the term "any employee welfare benefit plan or employee pension benefit plan" means any employee benefit plan subject to any provision of title I of the Employee Retirement Income Security Act of 1974.

(Added Pub. L. 87-420, § 17(a), Mar. 20, 1962, 76 Stat. 41, and amended Pub. L. 93-406, title I, § 111(a)(2)(A), Sept. 2, 1974, 88 Stat. 851.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

§ 665. Theft or embezzlement from employment and training funds: [1] improper inducement: [1] obstruction of investigations

(a) Whoever, being an officer, director, agent, or employee of, or connected in any capacity with any agency receiving financial assistance under the Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals, embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed $100, such person shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

(b) Whoever, by threat or procuring dismissal of any person from employment or of refusal to employ or refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act induces any persons to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(c) Any person whoever willfully obstructs or impedes or endeavors to obstruct or impede, an investigation or inquiry under the Comprehensive Employment and Training Act, or the regulations thereunder, shall be punished by a fine of not more than $5,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(As amended Pub. L. 95-524, § 3(a), Oct. 27, 1978, 92 Stat. 2017.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act, referred to in text, is Pub. L. 92-203, Dec. 28, 1973, 87 Stat. 839, as amended, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

CODIFICATION

Section 711(a) of Pub. L. 93-203, set out in the credit to this section, was omitted in the general revision of Pub. L. 93-203 by Pub. L. 95-524.

AMENDMENTS

1978—Pub. L. 95-524, in section heading, substituted "employment and training funds:" for "manpower funds;" and inserted ": obstruction of investigations" following "improper inducement".

Subsec. (a). Pub. L. 95-524 substituted "Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals," for "Comprehensive Employment and Training Act of 1973".

Subsec. (b). Pub. L. 95-524 substituted "Comprehensive Employment and Training Act" for "Comprehensive Employment and Training Act of 1973".

Subsec. (c). Pub. L. 95-524 added subsec. (c).

CHAPTER 33—EMBLEMS, INSIGNIA AND NAMES

§ 702. Uniform of armed forces and Public Health Service

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 709. False advertising or misuse of names to indicate Federal agency

[See main edition for text of first three pars.]

Whoever, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, uses as a firm or business name or transacts business using the words "National Credit Union", "National Credit Union Administration", "National Credit Union Board", "National Credit Union Share Insurance Fund", "Share Insurance", or "Central Liquidity Facility", or the letters "NCUA", "NCUSIF", or "CLF", or any other combination or variation of those words or letters alone or with other words or letters, or any device or symbol or other means, reasonably calculated to convey the false impression that such name or business has some connection with, or authorization

[1] So in original. The colons probably should be semicolons.

from, the National Credit Union Administration, the Government of the United States, or any agency thereof, which does not in fact exist, or falsely advertises or otherwise represents by any device whatsoever that his or its business, product, or service has been in any way endorsed, authorized, or approved by the National Credit Union Administration, the Government of the United States, or any agency thereof, or falsely advertises or otherwise represents by any device whatsoever that his or its deposit liabilities, obligations, certificates, shares, or accounts are insured under the Federal Credit Union Act or by the United States or any instrumentality thereof, or being an insured credit union as defined in that Act falsely advertises or otherwise represents by any device whatsoever the extent to which or the manner in which share holdings in such credit union are insured under such Act; or

[See main edition for text of fifth to fifteenth pars.]

(As amended Nov. 10, 1978, Pub. L. 95-630, title XVIII, § 1804, 92 Stat. 3723.)

AMENDMENTS

1978—Pub. L. 95-630 in the fourth paragraph added provisions expanding the scope of the prohibition to include anyone, other than a bona fide organization or association of Federal or State credit unions or except as permitted by the laws of the United States, who misuses a firm or business name or transacts business using the words "National Credit Union", "National Credit Union Administration", "National Credit Union Board", "National Credit Union Share Insurance Fund", "Share Insurance", or "Central Liquidity Facility", or the letters "NCUA", "NCUSIF", or "CLF", or any other combination or variation of those words or letters reasonably calculated to convey the false impression that such name or business has some connection with or authorization from the National Credit Union Administration, the Government of the United States, or any agency thereof or represents by any device whatsoever that his business, product, or service is in any way endorsed, authorized, or approved or that he is in any way insured by the National Credit Union Administration, the Government of the United States, or any agency thereof.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Oct. 1, 1979, see section 1806 of Pub. L. 95-630, set out as an Effective Date note under section 1795 of Title 12, Banks and Banking.

§ 715. "The Golden Eagle Insignia"

As used in this section, "The Golden Eagle Insignia" means the words "The Golden Eagle" and the representation of an American Golden Eagle (colored gold) and a family group (colored midnight blue) enclosed within a circle (colored white with a midnight blue border) framed by a rounded triangle (colored gold with a midnight blue border) which was originated by the Department of the Interior as the official symbol for Federal recreation fee areas.

Whoever, except as authorized under rules and regulations issued by the Secretary of the Interior, knowingly manufactures, reproduces, or uses "The Golden Eagle Insignia", or any facsimile thereof, in such a manner as is likely to cause confusion, or to cause mistake, or to deceive, shall be fined not more than $250 or imprisoned not more than six months, or both.

The use of any such emblem, sign, insignia, or words which was lawful on the date of enactment of this Act shall not be a violation of this section.

A violation of this section may be enjoined at the suit of the Attorney General, upon complaint by the Secretary of the Interior.

(Added Pub. L. 92-347, § 3(b), July 11, 1972, 86 Stat. 461.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 35—ESCAPE AND RESCUE

§ 751. Prisoners in custody of institution or officer

(a) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or commissioner, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both; or if the custody or confinement is for extradition or by virtue of an arrest or charge of or for a misdemeanor, and prior to conviction, be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Whoever escapes or attempts to escape from the custody of the Attorney General or his authorized representative, or from any institution or facility in which he is confined by direction of the Attorney General, or from any custody under or by virtue of any process issued under the laws of the United States by any court, judge, or commissioner, or from the custody of an officer or employee of the United States pursuant to lawful arrest, shall, if the custody or confinement is by virtue of a lawful arrest for a violation of any law of the United States not punishable by death or life imprisonment and committed before such person's eighteenth birthday, and as to whom the Attorney General has not specifically directed the institution of criminal proceedings, or by virtue of a commitment as a juvenile delinquent under section 5034 of this title, be fined not more than $1,000 or imprisoned not more than one year, or both. Nothing herein contained shall be construed to affect the discretionary authority vested in the Attorney General pursuant to section 5032 of this title.

(June 25, 1948, ch. 645, 62 Stat. 734; Dec. 30, 1963, Pub. L. 88-251, § 1, 77 Stat. 834; Sept. 10, 1965, Pub. L. 89-176, § 3, 79 Stat. 675.)

CHANGE OF NAME

United States commissioners, referred to in text, were replaced by United States magistrates pursuant to Pub. L. 90-578, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

§ 755. Officer permitting escape

Whoever, having in his custody any prisoner by virtue of process issued under the laws of the United States by any court, judge, or commissioner, voluntarily suffers such prisoner to escape, shall be fined not more than $2,000 or imprisoned not more than two years, or both; or if he negligently suffers such person to escape, he shall be fined not more than $500 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 735.)

CHANGE OF NAME

United States commissioners, referred to in text, were replaced by United States magistrates pursuant to Pub. L. 90-578, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

CHAPTER 37—ESPIONAGE AND CENSORSHIP

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 42 section 402.

§ 792. Harboring or concealing persons

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 App. sections 19, 34.

§ 793. Gathering, transmitting or losing defense information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 792, 1717 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 App. sections 19, 34.

§ 794. Gathering or delivering defense information to aid foreign government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 792, 798, 1717 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 App. sections 19, 34.

§ 795. Photographing and sketching defense installations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 796, 797 of this title; title 50 App. section 34.

§ 796. Use of aircraft for photographing defense installations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 50 App. section 34.

§ 797. Publication and sale of photographs of defense installations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 50 App. section 34.

§ 798. Disclosure of classified information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505.

§ 798. Temporary extension of section 794

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title.

CHAPTER 39—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

[§§ 831 to 835. Repealed. Pub. L. 96-129, title II, § 216(b), Nov. 30, 1979, 93 Stat. 1015]

Section 831, acts June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 808; July 27, 1965, Pub. L. 89-95, 79 Stat. 285; Oct. 17, 1978, Pub. L. 95-473, § 2(a)(1)(A), 92 Stat. 1464, defined terms used in this chapter.

Section 832, acts June 25, 1948, ch. 645, 62 Stat. 738; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 809, related to the transportation of explosives, radioactive materials, etiologic agents, and other dangerous articles.

Section 833, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 810, related to the marking of packages containing explosives and other dangerous articles.

Section 834, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 810, related to the formulation of regulations by the Interstate Commerce Commission regarding transportation of explosives and other dangerous articles within the United States.

Section 835, acts June 25, 1948, ch. 645, 62 Stat. 739; Sept. 6, 1960, Pub. L. 86-710, 74 Stat. 811; Oct. 15, 1970, Pub. L. 91-452, title II, § 222, 84 Stat. 929; Oct. 17, 1978, Pub. L. 95-473, § 2(a)(1)(B), 92 Stat. 1464, authorized the Interstate Commerce Commission to administer, execute and enforce all provisions of sections 831 to 835 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective Nov. 30, 1979, see section 217 of Pub. L. 96-129, set out as an Effective Date note under section 2001 of Title 49, Transportation.

SAVINGS PROVISIONS

Section 218 of Pub. L. 96-129 provided that:

"(a) All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges which have been issued, made, granted, or allowed to become effective under the provisions of chapter 39 of title 18, United States Code repealed by this title [sections 831 to 835 of this title], and which are in effect at the time this title takes effect [November 30, 1979], shall continue in effect as though issued, made, granted, or allowed to become effective under the authority of this title [enacting section 2001 et seq. of Title 49, Transportation, amending section 1811 of Title 49, and repealing sections 831 to 835 of this title], according to their terms until modified, terminated, superseded, set aside, or repealed by the Secretary, by any court of competent jurisdiction, or by operation of law.

"(b) Suits, actions, or other proceedings pending upon the date of enactment of this title [November 30, 1979], shall not be affected by the provisions of this title [enacting section 2001 et seq. of Title 49, Transportation, amending section 1811 of Title 49, and repealing sections 831 to 835 of this title], and shall be completed as if this title had not been enacted, unless the Secretary makes a determination that the public safety otherwise requires."

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

§ 841. Definitions

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official of Department of the Treasury related to compliance with permits for interstate transport of explosives and compliance with regulations for storage of explosives under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(g), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of Title 15, Commerce and Trade.

§ 843. Licenses and user permits

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Treasury under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 841 of this title.

§§ 846, 847

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Secretary or other official in Department of Treasury under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 841 of this title.

CHAPTER 41—EXTORTION AND THREATS

§ 878. Threats and extortion against foreign officials, official guests, or internationally protected persons

[*See main edition for text of* (a) *to* (c)]

(d) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)).

(Added Pub. L. 94-467, § 8, Oct. 8, 1976, 90 Stat. 2000, and amended Pub. L. 95-163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95-504, § 2(b), Oct. 24, 1978, 92 Stat. 1705.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (d). Pub. L. 95-163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

CHAPTER 44—FIREARMS

§ 923. Licensing

[*See main edition for text of* (a)]

(b) Any person desiring to be licensed as a collector shall file an application for such license with the Secretary. The application shall be in such form and contain such information as the Secretary shall by regulation prescribe. The fee for such license shall be $10 per year. Any license granted under this subsection shall only apply to transactions in curios and relics.

[*See main edition for text of* (c)]

(d)(1) Any application submitted under subsection (a) or (b) of this section shall be approved if—

[*See main edition for text of* (A)]

(B) the applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not prohibited from transporting, shipping, or receiving firearms or ammunition in interstate or foreign commerce under section 922(g) and (h) of this chapter;

[*See main edition for text of* (C) *to* (E), (2); (e) *to* (j); *credits*]

CODIFICATION

Subsecs. (b) and (d)(1)(B) are set out in this supplement to correct typographical error in the main edition.

§ 924. Penalties

[*See main edition for text of* (a)]

(b) Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined not more than $10,000, or imprisoned not more than ten years, or both.

[*See main edition for text of* (c) *and* (d); *credits*]

CODIFICATION

Subsec. (b) is set out in this supplement to correct typographical error in the main edition.

CHAPTER 45—FOREIGN RELATIONS

§ 953. Private correspondence with foreign governments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 50 App. section 34.

CHAPTER 47—FRAUD AND FALSE STATEMENTS

§ 1001. Statements or entries generally

Section Referred to in Other Sections

This section is referred to in section 14 of this title; title 7 section 136h; title 12 section 1457; title 15 section 3413; title 19 section 2515; title 20 section 581; title 22 sections 1623, 3622; title 31 section 1052; title 40 section 276c; title 42 sections 1874, 2000b-3, 2000c-6, 3426, 3795a; title 43 sections 1212, 1812.

§ 1013. Farm loan bonds and credit bank debentures

Abolition of Joint-Stock Land Banks

Joint-stock land banks, established pursuant to act July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374, which enacted sections 811 to 824 of Title 12, Banks and Banking, were abolished pursuant to the repeal of act July 17, 1916, by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

References in Text

Federal savings and loan association, referred to in text, deemed also a reference to Federal mutual savings bank, see section 1462 of Title 12, Banks and Banking.

Abolition of Joint-Stock Land Banks

Joint-stock land banks, established pursuant to act July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374, which enacted sections 811 to 824 of Title 12, Banks and Banking, were abolished pursuant to the repeal of act July 17, 1916, by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

§ 1019. Certificates by consular officers

Whoever, being a consul, or vice consul, or other person employed in the consular service of the United States, knowingly certifies falsely to any invoice, or other paper, to which his certificate is authorized or required by law, shall be fined not more than $10,000 or imprisoned not more than three years, or both.

(June 25, 1948, ch. 645, 62 Stat. 753.)

Codification

Section is set out in this supplement to correct typographical error in the main edition.

§ 1026. Compromise, adjustment, or cancellation of farm indebtedness

Whoever knowingly makes any false statement for the purpose of influencing in any way the action of the Secretary of Agriculture, or of any person acting under his authority, in connection with any compromise, adjustment, or cancellation of any farm indebtedness as provided by sections 1150, 1150a, and 1150b of Title 12, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 755.)

Codification

Section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 51—HOMICIDE

§ 1114. Protection of officers and employees of the United States

Whoever kills any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service or of the Drug Enforcement Administration, any officer or enlisted man of the Coast Guard, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, while engaged in the performance of his official duties, or on account of the performance of his official duties, or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties shall be punished as provided under sections 1111 and 1112 of this title.

(As amended Aug. 3, 1977, Pub. L. 95-87, title VII, § 704, 91 Stat. 520; Nov. 8, 1978, Pub. L. 95-

616, § 3(j)(2), 92 Stat. 3112; Nov. 10, 1978, Pub. L. 95-630, title III, § 307, 92 Stat. 3677.)

CODIFICATION

Section 704 of Pub. L. 95-87, in addition to amending this section, enacted section 1294 of Title 30, Mineral Lands and Mining.

AMENDMENTS

1978—Pub. L. 95-630 inserted "or any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration engaged in or on account of the performance of his official duties" preceding "shall be punished".

Pub. L. 95-616 inserted "the Department of Commerce,".

1977—Pub. L. 95-87 inserted "or of the Department of the Interior" following "or of the Department of Labor".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective upon expiration of 120 days after Nov. 10, 1978, see section 2101 of Pub. L. 95-630, set out as an Effective Date note under section 375b of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 111, 1117 of this title; title 7 sections 84, 87c, 2146; title 16 section 742*l*; title 21 sections 461, 675; title 42 section 2000e-13.

§ 1116. Murder or manslaughter of foreign officials, official guests, or internationally protected persons

[*See main edition for text of* (a) *and* (b)]

(c) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)).

[*See main edition for text of* (d)]

(As amended Pub. L. 95-163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95-504, § 2(b), Oct. 24, 1978, 92 Stat. 1705.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for reference to section 101(35) of such Act.

1977—Subsec. (c). Pub. L. 95-163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

CHAPTER 53—INDIANS

§ 1151. Indian country defined

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

(June 25, 1948, ch. 645, 62 Stat. 757; May 24, 1949, ch. 139, § 25, 63 Stat. 94.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1164 of this title; title 15 sections 1175, 1243; title 25 section 1903.

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 711e, 1300f, 1323, 1918.

CHAPTER 55—KIDNAPING

§ 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

(1) the person is willfully transported in interstate or foreign commerce;

(2) any such act against the person is done within the special maritime and territorial jurisdiction of the United States;

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36)); or

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title,

shall be punished by imprisonment for any term of years or for life.

[*See main edition for text of* (b) *to* (d)]

(e) If the victim of an offense under subsection (a) is an internationally protected person, the United States may exercise jurisdiction over the offense if the alleged offender is present within the United States, irrespective of the place where the offense was committed or the nationality of the victim or the alleged offender. As used in this subsection, the United States

includes all areas under the jurisdiction of the United States including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38)).

[*See main edition for text of (f)*]

(As amended Nov. 9, 1977, Pub. L. 95-163, § 17(b)(1), 91 Stat. 1286; Oct. 24, 1978, Pub. L. 95-504, § 2(b), 92 Stat. 1705.)

REFERENCES IN TEXT

Section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36), referred to in subsec. (a)(3), probably should read section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 (38)), to reflect the redesignation of such par. (36), which was originally par. (32), by Pub. L. 93-366, title II, § 206, Aug. 7, 1974, 88 Stat. 419; Pub. L. 95-163, § 17(b)(1), and Pub. L. 95-504, § 2(b).

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-504 substituted reference to section 101(36) of the Federal Aviation Act of 1958 for reference to section 101(33) of such Act. See References in Text note above.

Subsec. (e). Pub. L. 95-504 substituted reference to section 101(38) of the Federal Aviation Act of 1958 for section 101(35) of such Act.

1977—Subsec. (a)(3). Pub. L. 95-163 substituted reference to section 101(33) of the Federal Aviation Act of 1958 for reference to section 101(32) of such Act. See References in Text note above.

Subsec. (e). Pub. L. 95-163 substituted reference to section 101(35) of the Federal Aviation Act of 1958 for reference to section 101(34) of such Act.

CHAPTER 61—LOTTERIES

§ 1304. Broadcasting lottery information

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1307 of this title; title 47 sections 312, 503.

§ 1307. State-conducted lotteries

[*See main edition for text of (a)*]

(b) The provisions of sections 1301, 1302, and 1303 shall not apply to the transportation or mailing—

(1) to addresses within a State of equipment, tickets, or material concerning a lottery which is conducted by that State acting under the authority of State law; or

(2) to an addressee within a foreign country of equipment, tickets, or material designed to be used within that foreign country in a lottery which is authorized by the law of that foreign country.

(c) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

[*See main edition for text of (d)*]

(As amended Pub. L. 96-90, § 1, Oct. 23, 1979, 93 Stat. 698.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-90, § 1(a), incorporated existing provision in text designated cl. (1), included mailing of equipment, and added cl. (2).

Subsec. (c). Pub. L. 96-90, § 1(b), designated existing text as cl. (1) and added cl. (2).

CHAPTER 67—MILITARY AND NAVY

§ 1384. Prostitution near military and naval establishments

TRANSFER OF FUNCTIONS

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 73—OBSTRUCTION OF JUSTICE

§ 1501. Assault on process server

Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States commissioner; or

Whoever assaults, beats, or wounds any officer or other person duly authorized, knowing him to be such officer, or other person so duly authorized, in serving or executing any such writ, rule, order, process, warrant, or other legal or judicial writ or process—

Shall, except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both.

(June 25, 1948, ch. 645, 62 Stat. 769.)

CHANGE OF NAME

United States commissioners, referred to in text, were replaced by United States magistrates pursuant to Pub. L. 90-578, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

§ 1503. Influencing or injuring officer, juror or witness generally

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official

duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 769.)

CHANGE OF NAME

United States commissioners, referred to in text, were replaced by United States magistrates pursuant to Pub. L. 90-578, Oct. 17, 1968, 82 Stat. 1118. See chapter 43 (§ 631 et seq.) of Title 28, Judiciary and Judicial Procedure.

§ 1504. Influencing juror by writing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 201 of this title.

§ 1507. Picketing or parading

Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or resorts to any other demonstration in or near any such building or residence, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

(Added Sept. 23, 1950, ch. 1024, title I, § 31(a), 64 Stat. 1018.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 79—PERJURY

§ 1621. Perjury generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 8 section 1357; title 30 section 49e; title 50 App. sections 19, 2255.

§ 1623. False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

[*See main edition for text of* (b)]

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if—

(1) each declaration was material to the point in question, and

(2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

[*See main edition for text of* (d) *and* (e); *credits*]

CODIFICATION

Subsecs. (a) and (c) of this section are set out in this supplement to correct typographical error in the main edition.

CHAPTER 85—PRISON-MADE GOODS

§ 1761. Transportation or importation

[*See main edition for text of* (a) *and* (b)]

(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than seven pilot projects designated by the Administrator of the Law Enforcement Assistance Administration and who—

(1) have, in connection with such work, received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was preformed, except that such wages may be subject to deductions which shall not, in the aggregate, exceed 80 per centum of gross wages, and shall be limited as follows:

(A) taxes (Federal, State, local);

(B) reasonable charges for room and board as determined by regulations which shall be issued by the Chief State correctional officer;

(C) allocations for support of family pursuant to State statute, court order, or agreement by the offender;

(D) contributions to any fund established by law to compensate the victims of crime of not more than 20 per centum but not less than 5 per centum of gross wages;

(2) have not solely by their status as offenders, been deprived of the right to participate in benefits made available by the Federal or State Government to other individuals on the basis of their employment, such as workmen's compensation. However, such convicts or prisoners shall not be qualified to receive any

payments for unemployment compensation while incarcerated, notwithstanding any other provision of the law to the contrary;

(3) have participated in such employment voluntarily and have agreed in advance to the specific deductions made from gross wages pursuant to this section, and all other financial arrangements as a result of participation in such employment.

(As amended June 19, 1968, Pub. L. 90-351, title I, § 827(a), as added Dec. 27, 1979, Pub. L. 96-157, § 2, 93 Stat. 1215.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-157 added subsec. (c).

EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON MADE GOODS

Pub. L. 90-351, title I, § 827(c), as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1215, provided that:

"The provisions of this section [amending this section and section 35 of Title 41, Public Contracts] creating exemptions to Federal restrictions on marketability of prison made goods shall not apply unless—

"(1) representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by this section; and

"(2) such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1762 of this title; title 41 section 35.

CHAPTER 91—PUBLIC LANDS

Sec.
1862. Trespass on Bull Run National Forest.[1]

[§ 1862. Repealed. Pub. L. 95-200, § 3(c), Nov. 23, 1977, 91 Stat. 1428]

Section, act June 25, 1948, ch. 645, 62 Stat. 789, imposed a fine of not more than $500 or imprisonment of not more than six months as the penalty for knowingly trespassing upon the reserve known as the Bull Run National Forest in the Cascade Mountains. See note set out under section 482b of Title 16, Conservation, for the remainder of Pub. L. 95-200, including savings provisions therein, which in addition to repealing this section created the Bull Run Watershed Management Unit, Mount Hood National Forest.

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

Sec.
1906. Disclosure of information by bank examiner.[2]

§ 1905. Disclosure of confidential information generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 7 section 136h; title 15 sections 330b, 771, 773, 796, 1193, 1401, 1418, 1914, 1944, 1990d, 2008, 2055, 2217, 2613; title 26 section 7213; title 29 section 664; title 33 sections 1318, 1320, 1322, 1369, 1513; title 42 sections 263g, 263i, 300j-4, 4912, 5916, 5919, 6274, 6927, 7135, 7542, 7607, 7621; title 46 section 1463; title 49 sections 1681, 1905, 2010.

§ 1906. Disclosure of information from a bank examination report

Whoever, being an examiner, public or private, or a General Accounting Office employee with access to bank examination report information under section 117(e) of the Accounting and Auditing Act of 1950, discloses the names of borrowers or the collateral for loans of any member bank of the Federal Reserve System, or bank insured by the Federal Deposit Insurance Corporation examined by him or subject to General Accounting Office audit under section 117(e) of the Accounting and Auditing Act of 1950 to other than the proper officers of such bank, without first having obtained the express permission in writing from the Comptroller of the Currency as to a national bank, the Board of Governors of the Federal Reserve System as to a State member bank, or the Federal Deposit Insurance Corporation as to any other insured bank, or from the board of directors of such bank, except when ordered to do so by a court of competent jurisdiction, or by direction of the Congress of the United States, or either House thereof, or any committee of Congress or either House duly authorized or as authorized by section 117(e) of the Accounting and Auditing Act of 1950 shall be fined not more than $5,000 or imprisoned not more than one year or both.

(As amended July 21, 1978, Pub. L. 95-320, § 3, 92 Stat. 393.)

REFERENCES IN TEXT

Section 117(e) of the Accounting and Auditing Act of 1950, referred to in text, is section 117(e) of act Sept. 12, 1950, ch. 946, title I, pt. II, 64 Stat. 837, which is classified to section 67(e) of Title 31, Money and Finance.

AMENDMENTS

1978—Pub. L. 95-320 substituted "from a bank examination report" for "by bank examiner" in the section catchline and, in text, substituted "public or private, or a General Accounting Office employee with access to bank examination report information under section 117(e) of the Accounting and Auditing Act of 1950, discloses" for "public or private, discloses", "examined by him or subject to General Accounting Office audit under section 117(e) of the Accounting and Auditing Act of 1950 to other than" for ", examined by him, to other than", and "either House duly authorized or as authorized by section 117(e) of the Accounting and Auditing Act of 1950 shall be fined" for "either House duly authorized, shall be fined".

§ 1907. Disclosure of information by farm credit examiner

ABOLITION OF JOINT-STOCK LAND BANKS

Joint-stock land banks, established pursuant to act July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374, which enacted sections 811 to 824 of Title 12, Banks and Banking, were abolished pursuant to the repeal of act July 17, 1916, by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

[1] Section 1862 was repealed by Pub. L. 95-200, § 3(c), Nov. 23, 1977, 91 Stat. 1428, without a concurrent repeal of item 1862 in the analysis.

[2] So in original. Does not conform to section catchline.

§ 1913. Lobbying with appropriated moneys

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 29 section 796i; title 42 section 6012.

§ 1917. Interference with civil service examinations

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3622.

CHAPTER 95—RACKETEERING

§ 1953. Interstate transportation of wagering paraphernalia

[*See main edition for text of* (a)]

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, or (5) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a lottery which is authorized by the laws of that foreign country.

[*See main edition for text of* (c)]

(d) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(e) For the purposes of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests.

(As amended Pub. L. 96-90, § 2, Oct. 23, 1979, 93 Stat. 698.)

AMENDMENTS

1979—Subsec. (b)(5). Pub. L. 96-90, § 2(1), added cl. (5).

Subsecs. (d), (e). Pub. L. 96-90, § 2(2), added subsecs. (d) and (e).

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States;

[*See main edition for text of* (2) *to* (10)]

(As amended Pub. L. 95-575, § 3(c), Nov. 2, 1978, 92 Stat. 2465; Pub. L. 95-598, title III, § 314(g), Nov. 6, 1978, 92 Stat. 2677.)

AMENDMENTS

1978—Par. (1)(B). Pub. L. 95-575 inserted "sections 2341-2346 (relating to trafficking in contraband cigarettes)," following "sections 2314 and 2315 (relating to interstate transportation of stolen property),".

Par. (1)(D). Pub. L. 95-598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-575 effective Nov. 2, 1978, see section 4 of Pub. L. 95-575, set out as an Effective Date note under section 2341 of this title.

CHAPTER 101—RECORDS AND REPORTS

§ 2071. Concealment, removal, or mutilation generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 3622.

CHAPTER 103—ROBBERY AND BURGLARY

§ 2113. Bank robbery and incidental crimes

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (g), deemed also a reference to Federal mutual savings bank, see section 1462 of Title 12, Banks and Banking.

CHAPTER 105—SABOTAGE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 38 section 3505; title 42 section 402; title 50 section 1801.

§ 2152. Fortifications, harbor defenses, or defensive sea areas

Whoever willfully trespasses upon, injures, or destroys any of the works or property or material of any submarine mine or torpedo or fortification or harbor-defense system owned or constructed or in process of construction by the United States; or

Whoever willfully interferes with the operation or use of any such submarine mine, torpedo, fortification, or harbor-defense system; or

Whoever knowingly, willfully, or wantonly violates any duly authorized and promulgated order or regulation of the President governing persons or vessels within the limits of defensive sea areas, which the President, for purposes of national defense, may from time to time establish by executive order—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(June 25, 1948, ch. 645, 62 Stat. 799.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

§ 2157. Temporary extension of sections 2153 and 2154

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

CHAPTER 109—SEARCHES AND SEIZURES

§ 2234. Authority exceeded in executing warrant

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 21 section 885.

§ 2235. Search warrant procured maliciously

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 21 section 885.

CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

Sec.
2251. Sexual exploitation of children.
2252. Certain activities relating to material involving the sexual exploitation of minors.
2253. Definitions for chapter.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed, or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual or print medium will be transported in interstate or foreign commerce or mailed or if such visual or print medium has actually been transported in interstate or foreign commerce or mailed.

(c) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not less than two years nor more than 15 years, or both.

(Added Pub. L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 7.)

SHORT TITLE

Section 1 of Pub. L. 95-225 provided: "That this Act [which enacted this chapter and amended section 2423 of this title] may be cited as the 'Protection of Children Against Sexual Exploitation Act of 1977'."

SEVERABILITY OF PROVISIONS

Section 4 of Pub. L. 95-225 provided that: "If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) knowingly transports or ships in interstate or foreign commerce or mails, for the

purpose of sale or distribution for sale, any obscene visual or print medium, if—

(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual or print medium depicts such conduct; or

(2) knowingly receives for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium that has been transported or shipped in interstate or foreign commerce or mailed, if—

(A) the producing of such visual or print medium involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual or print medium depicts such conduct;

shall be punished as provided in subsection (b) of this section.

(b) Any person who violates this section shall be fined not more than $10,000, or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this section, such person shall be fined not more than $15,000, or imprisoned not less than two years nor more than 15 years, or both.

(Added Pub. L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 7.)

§ 2253. Definitions for chapter

For the purposes of this chapter, the term—

(1) "minor" means any person under the age of sixteen years;

(2) "sexually explicit conduct" means actual or simulated—

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

(E) lewd exhibition of the genitals or pubic area of any person;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising, for pecuniary profit; and

(4) "visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium.

(Added Pub. L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 8.)

CHAPTER 111—SHIPPING

§ 2279. Boarding vessels before arrival

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 section 163.

CHAPTER 113—STOLEN PROPERTY

§ 2318. Transportation, sale or receipt of phonograph records bearing forged or counterfeit labels

(a) Whoever knowingly and with fraudulent intent transports, causes to be transported, receives, sells, or offers for sale in interstate or foreign commerce any phonograph record, disk, wire, tape, film, or other article on which sounds are recorded, to which or upon which is stamped, pasted, or affixed any forged or counterfeited label, knowing the label to have been falsely made, forged, or counterfeited shall be fined not more than $10,000 or imprisoned for not more than one year, or both, for the first such offense and shall be fined not more than $25,000 or imprisoned for not more than two years, or both, for any subsequent offense.

(b) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all counterfeit labels and all articles to which counterfeit labels have been affixed or which were intended to have had such labels affixed.

(c) Except to the extent they are inconsistent with the provisions of this title, all provisions of section 509, title 17, United States Code, are applicable to violations of subsection (a).

(Added Pub. L. 87-773, § 1, Oct. 9, 1962, 76 Stat. 775, and amended Pub. L. 93-573, title I, § 103, Dec. 31, 1974, 88 Stat. 1873; Pub. L. 94-553, title I, § 111, Oct. 19, 1976, 90 Stat. 2600.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-553 designated existing provisions as subsec. (a) and in subsec. (a) as so designated substituted "$10,000" for "$25,000" and "$25,000" for "$50,000".

Subsecs. (b) and (c). Pub. L. 94-553 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-553 effective Jan. 1, 1978, see section 102 of Pub. L. 94-553, set out as a note preceding section 101 of Title 17, Copyrights.

CHAPTER 114—TRAFFICKING IN CONTRABAND CIGARETTES

Sec.
2341. Definitions.
2342. Unlawful acts.
2343. Recordkeeping and inspection.
2344. Penalties.
2345. Effect on State law.
2346. Enforcement and regulations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 49 section 781.

§ 2341. Definitions

As used in this chapter—

(1) the term "cigarette" means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term "contraband cigarettes" means a quantity in excess of 60,000 cigarettes, which bear no evidence of the payment of applicable State cigarette taxes in the State

where such cigarettes are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

(3) the term "common or contract carrier" means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State;

(4) the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands; and

(5) the term "Secretary" means the Secretary of the Treasury.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2463.)

REFERENCES IN TEXT

Chapter 52 of the Internal Revenue Code of 1954, referred to in par (2)(A), is classified generally to chapter 52 (§ 5701 et seq.) of Title 26, Internal Revenue Code.

The Interstate Commerce Act, referred to in par. (3), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95–473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

EFFECTIVE DATE

Section 4 of Pub. L. 95–575 provided:

"(a) Except as provided in subsection (b), this Act [enacting this chapter, amending section 1961 of this title and sections 781 and 787 of Title 49, Transportation, and enacting provisions set out as a note under this section] shall take effect on the date of its enactment [Nov. 2, 1978].

"(b) Sections 2342(b) and 2343 of title 18, United States Code as enacted by the first section of this Act, shall take effect on the first day of the first month beginning more than 120 days after the date of the enactment of this Act [Nov. 2, 1978]."

AUTHORIZATION OF APPROPRIATIONS

Section 5 of Pub. L. 95–575 provided that: "There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of chapter 114 of title 18, United States Code, added by the first section of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 49 section 787.

§ 2342. Unlawful acts

(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.

(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2464.)

EFFECTIVE DATE

Subsec. (a) of this section effective Nov. 2, 1978, and subsec. (b) of this section effective on the first day of the first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as an Effective Date note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2344 of this title.

§ 2343. Recordkeeping and inspection

(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction shall maintain such information about the shipment, receipt, sale, and distribution of cigarettes as the Secretary may prescribe by rule or regulation. The Secretary may require such person to keep only—

(1) the name, address, destination (including street address), vehicle license number, driver's license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(3) a declaration of the name and address of the recipient's principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business. Nothing contained herein shall authorize the Secretary to require reporting under this section.

(b) Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction, or pursuant to a duly issued search warrant, the Secretary may enter the premises (including places of storage) of such person for the purpose of inspecting any records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2464.)

EFFECTIVE DATE

Section effective on the first day of the first month beginning more than 120 days after Nov. 2, 1978, see section 4 of Pub. L. 95–575, set out as an Effective Date note under section 2341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2344, 2346 of this title.

§ 2344. Penalties

(a) Whoever knowingly violates section 2342(a) of this title shall be fined not more than $100,000 or imprisoned not more than five years, or both.

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined not more than $5,000 or imprisoned not more than three years, or both.

(c) Any contraband cigarettes involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2464.)

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

Section 5845(a) of the Internal Revenue Code of 1954, referred to in subsec. (c), is classified to section 5845(a) of Title 26 Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

§ 2345. Effect on State law

(a) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce cigarette tax laws, to provide for the confiscation of cigarettes and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

(b) Nothing in this chapter shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by a number of States, through interstate compact or otherwise, to provide for the administration of State cigarette tax laws, to provide for the confiscation of cigarettes and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2465.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

§ 2346. Enforcement and regulations

The Secretary, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.

(Added Pub. L. 95–575, § 1, Nov. 2, 1978, 92 Stat. 2465.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1961, 2344 of this title.

CHAPTER 115—TREASON, SEDITION, AND SUBVERSIVE ACTIVITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2516 of this title; title 5 section 8312; title 22 sections 1641k, 1642h; title 42 section 402; title 50 App. section 2017g.

§ 2381. Treason

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505; title 50 App. section 34.

§ 2382. Misprision of treason

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505; title 50 App. section 34.

§ 2383. Rebellion or insurrection

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1481; title 38 section 3505; title 50 App. section 34.

§ 2384. Seditious conspiracy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 sections 1251, 1481; title 38 section 3505; title 50 App. section 34.

§ 2385. Advocating overthrow of Government

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 8 section 1481; title 38 section 3505; title 50 App. section 34.

§ 2386. Registration of certain organizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 22 section 612; title 50 App. section 34.

§ 2387. Activities affecting armed forces generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 5 section 8312; title 38 section 3505; title 50 App. section 34.

§ 2388. Activities affecting armed forces during war

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 1717, 2391 of this title; title 5 section 8312; title 8 section 1251; title 38 section 3505; title 50 App. sections 19, 34.

§ 2391. Temporary extension of section 2388

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

CHAPTER 117—WHITE SLAVE TRAFFIC

Sec.
2423. Transportation of minors.

AMENDMENTS

1978—Pub. L. 95-225, § 3(b), Feb. 6, 1978, 92 Stat. 9, in item 2423 substituted "Transportation of minors" for "Coercion or enticement of minor female".

§ 2423. Transportation of minors

(a) Any person who transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of, any minor in interstate or foreign commerce, or within the District of Columbia or any territory or other possession of the United States, with the intent—

(1) that such minor engage in prostitution; or

(2) that such minor engage in prohibited sexual conduct, if such person so transporting, financing, causing, or facilitating movement knows or has reason to know that such prohibited sexual conduct will be commercially exploited by any person;

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) As used in this section—

(1) the term "minor" means a person under the age of eighteen years;

(2) the term "prohibited sexual conduct" means—

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sado-masochistic abuse (for the purpose of sexual stimulation); or

(E) lewd exhibition of the genitals or pubic area of any person; and

(3) the term "commercial exploitation" means having as a direct or indirect goal monetary or other material gain.

(As amended Feb. 6, 1978, Pub. L. 95-225, § 3(a), 92 Stat. 8.)

AMENDMENTS

1978—Pub. L. 95-225 in the subsec. catchline substituted "Transportation of minors" for "Coercion or enticement of minor female", designated existing provision as subsec. (a), and in subsec. (a) as so designated, substituted provisions relating to conduct prohibiting the transportation of minors for provisions relating to conduct prohibiting the coercion or enticement of a minor female, and added subsec. (b).

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 47 section 605; title 50 section 1805.

§ 2511. Interception and disclosure of wire or oral communications prohibited

[*See main edition for text of* (1)]

(2)(a) [*See main edition for text of* (i)]

(ii) Notwithstanding any other law, communication common carriers, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept wire or oral communications or to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, if the common carrier, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with—

(A) a court order directing such assistance signed by the authorizing judge, or

(B) a certification in writing by a person specified in section 2518(7) of this title or the Attorney General of the United States that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required,

setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required. No communication common carrier, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order or certification under this subparagraph, except as may otherwise be required by legal process and then only after prior notification to the Attorney General or to the principal prosecuting attorney of a State or any political subdivision of a State, as may be appropriate. Any violation of this subparagraph by a communication common carrier or an officer, employee, or agent thereof, shall render the carrier liable for the civil damages provided for in section 2520. No cause of action shall lie in any court against any communication common carrier, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of an order or certification under this subparagraph.

[*See main edition for text of* (b) *to* (d)]

(e) Notwithstanding any other provision of this title or section 605 or 606 of the Communi-

cations Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter, or section 605 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

[(3) Repealed. Pub. L. 95-511, title II, § 201(c), Oct. 25, 1978, 92 Stat. 1797]

(As amended Pub. L. 95-511, title II, § 201(a)-(c), Oct. 25, 1978, 92 Stat. 1796, 1797.)

REFERENCES IN TEXT

The Foreign Intelligence Surveillance Act of 1978, referred to in par. (2)(e) and (f), is Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, which is classified principally to chapter 36 (§ 1801 et seq.) of Title 50, War and National Defense. Section 101 of the Foreign Intelligence Surveillance Act of 1978, referred to in par. (2)(a)(ii), (e), and (f), is classified to section 1801 of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 50 and Tables.

Sections 605 and 606 of the Communications Act of 1934, referred to in par. (2)(e) and (f), are classified to sections 605 and 606 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, respectively.

AMENDMENTS

1978—Par. (2)(a)(ii). Pub. L. 95-511, § 201(a), substituted provisions authorizing communication common carriers etc., to provide information to designated persons, prohibiting disclosure of intercepted information, and rendering violators civilly liable for provision exempting communication common carriers from criminality for giving information to designated officers.

Par. (2)(e). Pub. L. 95-511, § 201(b), added par. (2)(e).

Par. (2)(f). Pub. L. 95-511, § 201(b), added par. (2)(f).

Par. (3). Pub. L. 95-511, § 201(c), struck out par. (3) which provided that nothing in this chapter or section 605 of title 47 limited the President's constitutional power to gather necessary intelligence to protect the national security and stated the conditions necessary for the reception into evidence and disclosure of communications intercepted by the President.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-511 effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub. L. 95-511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

[*See main edition for text of (a) to (d)*]

(e) any offense involving fraud connected with a case under title 11 or the manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic drugs, marihuana, or other dangerous drugs, punishable under any law of the United States;

[*See main edition for text of (f) and (g); (2)*]

(As amended Pub. L. 95-598, title III, § 314(h), Nov. 6, 1978, 92 Stat. 2677.)

AMENDMENTS

1978—Par. (1)(e). Pub. L. 95-598 substituted "fraud connected with a case under title 11" for "bankruptcy fraud".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2514, 2518 of this title; title 28 section 594.

§ 2518. Procedure for interception of wire or oral communications

(1) Each application for an order authorizing or approving the interception of a wire or oral communication under this chapter shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:

[*See main edition for text of (a) to (f); (2) and (3)*]

(4) Each order authorizing or approving the interception of any wire or oral communication under this chapter shall specify—

[*See main edition for text of (a) to (e)*]

An order authorizing the interception of a wire or oral communication under this chapter shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian or other person shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian or other person furnishing such facilities or technical assistance shall be compensated therefor by the applicant at the prevailing rates.

[*See main edition for text of (5) to (8)*]

(9) The contents of any wire or oral communication intercepted pursuant to this chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a Federal or State court unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the judge if he finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving such information.

(10)(a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter, or evidence derived therefrom, on the grounds that—

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

[*See main edition for text of* (b)]

(As amended Pub. L. 95-511, title II, § 201(d)-(g), Oct. 25, 1978, 92 Stat. 1797, 1798.)

AMENDMENTS

1978—Par. (1). Pub. L. 95-511, § 201(d), added "under this chapter" following "communication".

Par. (4). Pub. L. 95-511, § 201(e), added "under this chapter" following "wire or oral communication" wherever appearing.

Par. (9). Pub. L. 95-511, § 201(e), substituted "any wire or oral communication intercepted pursuant to this chapter" for "any intercepted wire or oral communication".

Par. (10). Pub. L. 95-511, § 201(g), substituted "any wire or oral communication intercepted pursuant to this chapter," for "any intercepted wire or oral communication,".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-511 effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub. L. 95-511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2511, 2516, 2519 of this title.

§ 2519. Reports concerning intercepted wire or oral communications

[*See main edition for text of* (1) *and* (2)]

(3) In April of each year the Director of the Administrative Office of the United States Courts shall transmit to the Congress a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire or oral communications pursuant to this chapter and the number of orders and extensions granted or denied pursuant to this chapter during the preceding calendar year. Such reports shall include a summary and analysis of the data required to be filed with the Administrative Office by subsections (1) and (2) of this section. The Director of the Administrative Office of the United States Courts is authorized to issue binding regulations dealing with the content and form of the reports required to be filed by subsections (1) and (2) of this section.

(As amended Pub. L. 95-511, title II, § 201(h), Oct. 25, 1978, 92 Stat. 1798.)

AMENDMENTS

1978—Par. (3). Pub. L. 95-511 added "pursuant to this chapter" following "wire or oral communications" and "granted or denied".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-511 effective Oct. 25, 1978, except as specifically provided, see section 301 of Pub. L. 95-511, set out as an Effective Date note under section 1801 of Title 50, War and National Defense.

§ 2520. Recovery of civil damages authorized

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2511 of this title.

PART II—CRIMINAL PROCEDURE

CHAPTER 201—GENERAL PROVISIONS

§ 3006A. Adequate representation of defendants

[*See main edition for text of* (a) *to* (c)]

(d) Payment for representation.—

[*See main edition for text of* (1) *to* (5)]

(6) Proceedings before appellate courts.—If a person for whom counsel is appointed under this section appeals to an appellate court or petitions for a writ of certiorari, he may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28.

[*See main edition for text of* (e) *to* (g)]

(h) Defender organization.—

[*See main edition for text of* (1)]

(2) Types of defender organizations.—

(A) Federal Public Defender Organization.—A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the judicial council of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the judicial council of the circuit for incompetency, misconduct in office, or neglect of duty. The compensation of the Federal Public Defender shall be fixed by the judicial council of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the Judicial Council of the Circuit and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, similarly as under title 28, United States Code, section 605, and subject to the conditions of that section, a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

(B) Community Defender Organization.—A Community Defender Organization shall be a nonprofit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated caseload and expenses for the coming year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States:

(i) receive an initial grant for expenses necessary to establish the organization; and

(ii) in lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

[See main edition for text of (i) to (l); credits]

CODIFICATION

Subsecs. (d)(6) and (h)(2) are set out in this supplement to correct typographical errors in the main edition.

CERTIFICATION BY ATTORNEY GENERAL TO ADMINISTRATIVE OFFICE OF UNITED STATES COURTS OF PAYMENT OF OBLIGATED EXPENSES

Section 5(c) of Pub. L. 95-144, Oct. 28, 1977, 91 Stat. 1222, provided that: "The Attorney General shall certify to the Administrative Office of the United States Courts those expenses which it is obligated to pay on behalf of an indigent offender under section 3006A of title 18, United States Code, and similar statutes."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162, 4109, 4214 of this title; title 28 sections 753, 1875; title 48 section 1694c.

CHAPTER 203—ARREST AND COMMITMENT

§ 3041. Power of courts and magistrates

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3042, 3152, 3156 of this title; title 16 section 916g; title 25 section 5557.

§ 3045. Internal revenue violations

Warrants of arrest for violations of internal revenue laws may be issued by United States magistrates upon the complaint of a United States attorney, assistant United States attorney, collector, or deputy collector of internal revenue or revenue agent, or private citizen; but no such warrant of arrest shall be issued upon the complaint of a private citizen unless first approved in writing by a United States attorney.

(June 25, 1948, ch. 645, 62 Stat. 816; Oct. 17, 1968, Pub. L. 95-578, title III, § 301(a)(2), 82 Stat. 1115.)

CODIFICATION

Section is set out in this supplement to correct typographical error in the main edition.

§ 3056. Secret Service powers

ABOLITION OF JOINT-STOCK LAND BANKS

Joint-stock land banks, established pursuant to act July 17, 1916, ch. 245, title I, § 16, 39 Stat. 374, which enacted sections 811 to 824 of Title 12, Banks and Banking, were abolished pursuant to the repeal of act July 17, 1916, by Pub. L. 92-181, title V, § 5.26(a), Dec. 10, 1971, 85 Stat. 624.

SECRET SERVICE PROTECTION OF FORMER FEDERAL OFFICIALS

Pub. L. 95-1, Jan. 19, 1977, 91 Stat. 3, provided: "That the United States Secret Service, in addition to other duties now provided by law, is authorized to furnish protection to a person who (a) as a Federal Government official has been receiving protection by the United States Secret Service for a period immediately preceding January 20, 1977, or (b) as a member of such official's immediate family has been receiving protection by either the United States Secret Service or other security personnel of the official's department immediately preceding January 20, 1977, if the President determines that such person may thereafter be in significant danger: *Provided, however,* That protection of any such person shall continue only for such period as the President determines and shall not continue beyond July 20, 1977, unless otherwise permitted by law."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 552a; title 12 section 3414; title 31 section 685a.

§ 3057. Bankruptcy investigations

(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(i), 92 Stat. 2677.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598, § 314(i), substituted "judge" for "referee" and "violation under chapter 9 of this title" for "violations of the bankruptcy laws". Subsec. (b). Pub. L. 95-598, § 314(i)(1), substituted "judge" for "referee".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 205—SEARCHES AND SEIZURES

§ 3112. Search warrants for seizure of animals, birds or eggs

Any employee authorized by the Secretary of the Interior to enforce sections 42, 43, and 44 of this title, and any officer of the customs, shall have authority to execute any warrant to search for and seize any wildlife, product, property, or item used or possessed in connection with a violation of section 42 or 44, or in connection with a knowing and willful violation of section 43, and any such wildlife, product, property, or item so seized shall be held by him or by the United States marshal pending disposition thereof by the Secretary.

(As amended Nov. 8, 1978, Pub. L. 95-616, § 3(j)(1), 92 Stat. 3112.)

AMENDMENTS

1978—Pub. L. 95-616 substituted "by the Secretary" for "by the court".

CHAPTER 207—RELEASE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3041, 3731, 4285 of this title.

§ 3149. Release of material witness

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 28 section 1821.

CHAPTER 208—SPEEDY TRIAL

Sec.
3164. Persons detained or designated as being of high risk.
3174. Judicial emergency and implementation.

AMENDMENTS

1979—Pub. L. 96-43, § 11, Aug. 2, 1979, 93 Stat. 332, in item 3164 substituted "Persons detained or designated as being of high risk" for "Interim limits" and in item 3174 inserted "and implementation".

§ 3161. Time limits and exclusions

[*See main edition for text of* (a) *and* (b)]

(c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the pro-

visions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

[*See main edition for text of (f) and (g)*]

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

[*See main edition for text of (2) to (7)*]

(8) [*See main edition for text of (A)*]

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

[*See main edition for text of (i)*]

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

[*See main edition for text of (C); (i) and (j)*]

(As amended Pub. L. 96-43, §§ 2-5, Aug. 2, 1979, 93 Stat. 327, 328.)

AMENDMENTS

1979—Subsec. (c)(1). Pub. L. 96-43, § 2, merged the ten day indictment-to-arraignment and the sixty day arraignment-to-trial limits into a single seventy day indictment-to-trial period.

Subsec. (c)(2). Pub. L. 96-43, § 2, added subsec. (c)(2).

Subsec. (d). Pub. L. 96-43, § 3(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 96-43, § 3(b), substituted "seventy days" for "sixty days" in three instances and added provisions excluding the periods of delay enumerated in subsec. (h) of this section in computing the time limitations specified in this section and applying the sanctions of section 3162 of this title to this subsection.

Subsec. (h)(1). Pub. L. 96-43, § 4, added to the listing of excludable delays, delays resulting from the deferral of prosecution under section 2902 of title 28, delays caused by consideration by the court of proposed plea agreements, and delays resulting from the transportation of a defendant from another district or for the purpose of examination or hospitalization, and expanded provisions relating to exclusions of periods of delay resulting from hearings on pretrial motions, examinations and hearings relating to the mental or physical condition of defendant, or the removal of a defendant from another district under the Federal Rules of Criminal Procedure.

Subsec. (h)(8)(B)(ii). Pub. L. 96-43, § 5(a), expanded provisions authorizing the granting of continuances based on the complexity or unusual nature of a case to include delays in preparation of all phases of a case, including pretrial motion preparation.

Subsec. (h)(8)(B)(iii). Pub. L. 96-43, § 5(b), added provision authorizing a continuance where the delay in filing the indictment is caused by the arrest taking place at such time that the return and filing of the indictment can not reasonably be expected within the period specified in section 3161(b) of this title.

Subsec. (h)(8)(B)(iv). Pub. L. 96-43, § 5(c), added cl. (iv).

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96-43 provided: "That this Act [amending this section and sections 3163 to 3168, 3170 and 3174 of this title] may be cited as the 'Speedy Trial Act Amendments Act of 1979'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162, 3163, 3164, 3165, 3166, 3167, 3174 of this title; title 15 section 18a.

§ 3162. Sanctions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3161, 3163, 3174 of this title.

§ 3163. Effective dates

[*See main edition for text of* (a) *and* (b)]

(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1980.

(As amended Pub. L. 96-43, § 6, Aug. 2, 1979, 93 Stat. 328.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-43 substituted provision that section 3162 of this title was to become effective and apply to all cases commenced by arrest or summons, and all informations and indictments filed, on or after July 1, 1980, subject to section 3174(c) of this title, for provision that such section was to become effective after the date of expiration of the fourth twelve-calendar month period following July 1, 1975.

§ 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

[*See main edition for text of* (c)]

(As amended Pub. L. 96-43, § 7, Aug. 2, 1979, 93 Stat. 329.)

AMENDMENTS

1979—Pub. L. 96-43, § 7(1), substituted "Persons detained or designated as being of high risk" for "Interim limits" in section catchline.

Subsec. (a). Pub. L. 96-43, § 7(2), struck out provisions limiting the trial priority to be accorded persons specified in cls. (1) and (2) of this subsection to the interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and (c) of this title become effective.

Subsec. (b). Pub. L. 96-43, § 7(3), struck out provisions making trial priority provisions of this subsection applicable during an interim period only and requiring the trial of any person detained or designated by the government as being of high risk on or before the first day of such interim period to commence no later than ninety days following the first day of the period and added provision excluding the periods of delay specified in section 3161(h) of this title in computing the time limitation of this section.

§ 3165. District plans—Generally

[*See main edition for text of* (a) *to* (d)]

(e) [*See main edition for text of* (1)]

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and fifth twelve-calendar month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(3) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3174(c) shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.

[*See main edition for text of (f)*]

(As amended Pub. L. 96-43, § 8, Aug. 2, 1979, 93 Stat. 329.)

REFERENCES IN TEXT

For the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph, referred to in subsec. (e)(3), see section 3163(a) and (b) of this title. The date of enactment of par. (3) of subsec. (e) of this section is the date of enactment of Pub. L. 96-43, which was approved Aug. 2, 1979. Subsecs. (a) and (b) of section 3163 of this title were not amended by Pub. L. 96-43.

AMENDMENTS

1979—Subsec. (e)(2). Pub. L. 96-43, § 8(1), substituted "fifth twelve-calendar" for "subsequent twelve-calendar".

Subsec. (e)(3). Pub. L. 96-43, § 8(2), added par. (3).

§ 3166. District plans—contents

[*See main edition for text of (a)*]

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

[*See main edition for text of (1) to (6)*]

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications;

(8) the incidence of, and reasons for each thirty-day extention[1] under section 3161(b) with respect to an indictment in that district; and

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

[*See main edition for text of (1) to (4)*]

(5) The rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition;

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition; and

(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.

[*See main edition for text of (d) and (e)*]

(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.

(As amended Pub. L. 96-43, § 9(a)-(c), Aug. 2, 1979, 93 Stat. 329.)

AMENDMENTS

1979—Subsec. (b)(9). Pub. L. 96-43, § 9(a), added par. (9).

Subsec. (c)(7). Pub. L. 96-43, § 9(b), added par. (7).

Subsec. (f). Pub. L. 96-43, § 9(c), added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3167, 3170 of this title.

§ 3167. Reports to Congress

[*See main edition for text of (a)*]

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts. Such reports shall also include the following:

(1) The reasons why, in those cases not in compliance with the time limits of subsections (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3174 has not been made, the reason why such application has not been made.

(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.

(c) Not later than December 31, 1979, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

[1] So in original. Probably should be "extension".

(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.

(As amended Pub. L. 96–43, § 9(e), Aug. 2, 1979, 93 Stat. 330.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–43, § 9(e)(1), added pars. (1) to (6).

Subsec. (c). Pub. L. 96–43, § 9(e)(2), added subsec. (c).

§ 3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 96–43, § 9(d), Aug. 2, 1979, 93 Stat. 330.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–43 substituted "two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district" for "a private attorney experienced in the defense of criminal cases in the district".

§ 3170. Speedy trial data

(a) To facilitate the planning process, the implementation of the time limits, and continuous and permanent compliance with the objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics described in sections 3166(b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 96–43, § 9(f), Aug. 2, 1979, 93 Stat. 331.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–43 inserted "continuous and permanent compliance with the" and substituted "described in" for "required by".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3166, 3167 of this title.

§ 3174. Judicial emergency and implementation

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planing group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b). The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from indictment to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c)(1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d)(1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application. and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

(As amended Pub. L. 96–43, § 10, Aug. 2, 1979, 93 Stat. 331.)

REFERENCES IN TEXT

The date of enactment of the Speedy Trial Act Amendments Act of 1979, referred to in subsec. (d)(2), means the date of enactment of Pub. L. 96–43, which was approved Aug. 2, 1979.

AMENDMENTS

1979—Pub. L. 96–43, § 10(6), inserted "and implementation" in section catchline.

Subsec. (a). Pub. L. 96–43, § 10(1), inserted "as provided by subsection (b)."

Subsec. (b). Pub. L. 96–43, § 10(2), (3), substituted provisions authorizing the circuit judicial council, upon application of the chief judge of a district, to grant a suspension of the time limits prescribed by section 3161(c) of this title for provisions requiring such circuit council to apply to the Judicial Council of the United States for a suspension of such time limits and substituted provision placing a one hundred and eighty day limit on any time increase from indictment to trial for provision placing such limit for any increase from arraignment to trial.

Subsec. (c). Pub. L. 96–43, § 10(4), substituted provisions authorizing the chief judge of any district, with the approval of the planning group convened in such district, to apply to the circuit council to implement the provisions of section 3162 of this title at any time prior to the date the sanctions prescribed therein were to become effective, so long as there was concurrence that the district was prepared to fully implement the provisions of such section for provisions specifying the reporting requirements of this chapter, assuring involvement of the Congress in the suspension process, and guaranteeing that there be an interval of at least six months between consecutive suspension periods. See subsec. (d) of this section.

Subsecs. (d), (e). Pub. L. 96–43, § 10(5), added subsecs. (d) and (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3163, 3165, 3167 of this title.

CHAPTER 209—EXTRADITION

§ 3181. Scope and limitation of chapter

TREATIES OF EXTRADITION

The United States has entered into the following bilateral treaties of extradition:

Country	Date signed	Entered into force	Citation
Albania	Mar. 1, 1933	Nov. 14, 1935	49 Stat. 3313.
Argentina	Sept. 26, 1896.	July 2, 1900	31 Stat. 1883.
	Jan. 21, 1972	Sept. 15, 1972.	23 UST 3501.
Australia	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
	May 14, 1974	May 8, 1976	TIAS 8234.
Austria	Jan. 31, 1930	Sept. 11, 1930.	46 Stat. 2779.
	May 19, 1934	Sept. 5, 1934	49 Stat. 2710.
Bahamas	Dec. 22, 1931	June 24, 1935.	47 Stat. 2122.
		Aug. 17, 1978.	TIAS 9185.
Barbados	Dec. 22, 1931	June 24, 1935.	47 Stat. 2122.
Belgium	Oct. 26, 1901	July 14, 1902	32 Stat. 1984.
	June 20, 1935.	Nov. 7, 1935	49 Stat. 3276.
	Nov. 14, 1963	Dec. 25, 1964	15 UST 2252.
Bolivia	Apr. 21, 1900	Jan. 22, 1902	32 Stat. 1857.
Brazil	Jan. 13, 1961	Dec. 17, 1964	15 UST 2093.
	June 18, 1962.	Dec. 17, 1964	15 UST 2112.
Bulgaria	Mar. 19, 1924.	June 24, 1924.	43 Stat. 1886.
	June 8, 1934	Aug. 15, 1935	49 Stat. 3250.
Burma	Dec. 22, 1931	Nov. 1, 1941	47 Stat. 2122.
Canada	Aug. 9, 1842		8 Stat. 572.
	July 12, 1889		26 Stat. 1508.
	Dec. 13, 1900		32 Stat. 1864.
	Apr. 12, 1905		34 Stat. 2903.
	May 18, 1908	June 30, 1908.	35 Stat. 2035.
	May 15, 1922	Nov. 3, 1922	42 Stat. 2224.
	Jan. 8, 1925	July 27, 1925	44 Stat. 2100.
	Oct. 26, 1951	July 11, 1952	3 UST 2826.
	Dec. 3, 1971	Mar. 22, 1976.	TIAS 8237.
	June 28, 1974.	Mar. 22, 1976.	TIAS 8237.
	July 9, 1974	Mar. 22, 1976.	TIAS 8237.
Chile	Apr. 17, 1900	June 26, 1902.	32 Stat. 1850.
Colombia	May 7, 1888	Jan. 11, 1891	26 Stat. 1534.
	Sept. 9, 1940	July 6, 1943	57 Stat. 824.

Country	Date signed	Entered into force	Citation
Congo (Brazzaville)	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929	May 19, 1929	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936	50 Stat. 1117.
Costa Rica	Nov. 10, 1922	Apr. 27, 1923	43 Stat. 1621.
Cuba	Apr. 6, 1904	Mar. 2, 1905	33 Stat. 2265.
	Dec. 6, 1904	Mar. 2, 1905	33 Stat. 2273.
	Jan. 14, 1926	June 18, 1926	44 Stat. 2392.
Cyprus	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Czechoslovakia	July 2, 1925	Mar. 29, 1926	44 Stat. 2367.
	Apr. 29, 1935	Aug. 28, 1935	49 Stat. 3253.
Denmark	June 22, 1972	July 31, 1974	TIAS 7864.
Dominican Republic.	June 19, 1909	Aug. 2, 1910	36 Stat. 2468.
Ecuador	June 28, 1872	Nov. 12, 1873	18 Stat. 199.
	Sept. 22, 1939	May 29, 1941	55 Stat. 1196.
Egypt	Aug. 11, 1874	Apr. 22, 1875	19 Stat. 572.
El Salvador	Apr. 18, 1911	July 10, 1911	37 Stat. 1516.
Estonia	Nov. 8, 1923	Nov. 15, 1924	43 Stat. 1849.
	Oct. 10, 1934	May 7, 1935	49 Stat. 3190.
Fiji	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Aug. 17, 1973	TIAS 7707.
Finland	Aug. 1, 1924	Mar. 23, 1925	44 Stat. 2002.
	May 17, 1934	Aug. 10, 1934	49 Stat. 2690.
	June 11, 1976	May 11, 1980	TIAS 9626.
France	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929	May 19, 1929	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936	50 Stat. 1117.
	Feb. 12, 1970	Apr. 3, 1971	22 UST 407.
Gambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Germany, Federal Republic of.	July 12, 1930	Apr. 26, 1931	47 Stat. 1862.
Ghana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Granada	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Greece	May 6, 1931	Nov. 1, 1932	47 Stat. 2185.
	Sept. 2, 1937	Sept. 2, 1937	51 Stat. 357.
Guatemala	Feb. 27, 1903	Aug. 15, 1903	33 Stat. 2147.
	Feb. 20, 1940	Mar. 13, 1941	55 Stat. 1097.
Guyana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Haiti	Aug. 9, 1904	June 28, 1905	34 Stat. 2858.
Honduras	Jan. 15, 1909	July 10, 1912	37 Stat. 1616.
	Feb. 21, 1927	June 5, 1928	45 Stat. 2469.
Hungary	July 3, 1856	Dec. 13, 1856	11 Stat. 691.
Iceland	Jan. 6, 1902		32 Stat. 1906.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Iraq	June 7, 1934	Apr. 23, 1936	49 Stat. 3380.
Ireland	July 12, 1889		26 Stat. 1508.
	Dec. 13, 1900		32 Stat. 1864.
	Apr. 12, 1905		34 Stat. 2903.
Israel	Dec. 10, 1962	Dec. 5, 1963	14 UST 1707.
		Apr. 11, 1967	18 UST 382.
Italy	Mar. 23, 1868	Sept. 17, 1868	15 Stat. 629.
	Jan. 21, 1869	May 7, 1869	16 Stat. 767.
	June 11, 1884	Apr. 24, 1885	24 Stat. 1001.
		Apr. 17, 1946	61 Stat. 3687.
	Jan. 18, 1973	Mar. 11, 1975	TIAS 8052.
Jamaica	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Japan	Apr. 29, 1886	Nov. 26, 1886	24 Stat. 1015.
	May 17, 1906	Oct. 5, 1906	34 Stat. 2951.
	Mar. 3, 1978	Mar. 26, 1980	TIAS 9625.
Kenya	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Aug. 19, 1965	TIAS 5916.
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935	49 Stat. 3131.
Lesotho	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939	54 Stat. 1733.
Liechtenstein	May 20, 1936	June 28, 1937	50 Stat. 1337.
Lithuania	Apr. 9, 1924	Aug. 23, 1924	43 Stat. 1835.
	May 17, 1934	Jan. 8, 1935	49 Stat. 3077.
Luxembourg	Oct. 29, 1883	Aug. 13, 1884	23 Stat. 808.
	Apr. 24, 1935	Mar. 3, 1936	49 Stat. 3355.
Malawi	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Apr. 4, 1967	18 UST 1822.
Malaysia	Dec. 22, 1931		47 Stat. 2122.
Malta	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mauritius	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mexico	Feb. 22, 1899	Apr. 22, 1899	31 Stat. 1818.
	June 25, 1902	Apr. 13, 1903	TS 421.
	Dec. 23, 1925	July 11, 1926	44 Stat. 2409.
	Aug. 16, 1939	Apr. 14, 1941	55 Stat. 1133.
	May 4, 1978	Jan. 25, 1980	TIAS 9656.
Monaco	Feb. 15, 1939	Mar. 28, 1940	54 Stat. 1780.
Nauru	Dec. 22, 1931		47 Stat. 2122.
Netherlands	June 2, 1887	July 11, 1889	26 Stat. 1481.
	Jan. 18, 1904	Aug. 28, 1904	33 Stat. 2257.
New Zealand	July 12, 1889		26 Stat. 1508.
	Dec. 13, 1900		32 Stat. 1864.
	Apr. 12, 1905		34 Stat. 2903.
	Jan. 12, 1970	Dec. 8, 1970	22 UST 1.
Nicaragua	Mar. 1, 1905	July 14, 1907	35 Stat. 1869.
Nigeria	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Norway	June 7, 1893	Dec. 8, 1893	28 Stat. 1187.
	Dec. 10, 1904	Apr. 4, 1905	34 Stat. 2865.
	Feb. 1, 1938	Aug. 6, 1938	53 Stat. 1561.
	June 9, 1977	Mar. 7, 1980	TIAS 9679.
Pakistan	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Panama	May 25, 1904	May 8, 1905	34 Stat. 2851.
Papua New Guinea.	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Paraguay	Mar. 26, 1913	Jan. 17, 1914	38 Stat. 1754.
	May 24, 1973	May 7, 1974	TIAS 7838.
Peru	Nov. 28, 1899	Feb. 22, 1901	31 Stat. 1921.
Poland	Nov. 22, 1927	July 6, 1929	46 Stat. 2282.
	Apr. 5, 1935	June 5, 1936	49 Stat. 3394.
Portugal	May 7, 1908	Nov. 14, 1908	35 Stat. 2071.
Romania	July 23, 1924	Apr. 7, 1925	44 Stat. 2020.
	Nov. 10, 1936	July 27, 1937	50 Stat. 1349.
San Marino	Jan. 10, 1906	July 8, 1908	35 Stat. 1971.
	Oct. 10, 1934	June 28, 1935	49 Stat. 3198.
Sierra Leone	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Singapore	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		June 10, 1969	20 UST 2764.
South Africa	Dec. 18, 1947	Apr. 30, 1951	2 UST 884.
Spain	June 15, 1904	Apr. 6, 1908	35 Stat. 1947.
	May 29, 1970	June 16, 1971	22 UST 737.
Sri Lanka	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Surinam	June 2, 1887	July 11, 1889	26 Stat. 1481.
	Jan. 18, 1904	Aug. 28, 1904	33 Stat. 2257.
Swaziland	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		July 28, 1970	21 UST 1930.
Sweden	Oct. 24, 1961	Dec. 3, 1963	14 UST 1845.
Switzerland	May 14, 1900	Mar. 29, 1901	31 Stat. 1928.
	Jan. 10, 1935	May 16, 1935	49 Stat. 3192.
	Jan. 31, 1940	Apr. 8, 1941	55 Stat. 1140.
Tanzania	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Dec. 6, 1965	TIAS 5946.
Thailand	Dec. 30, 1922	Mar. 24, 1924	43 Stat. 1749.
Tonga	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Trinidad and Tobago.	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Turkey	Aug. 6, 1923	Aug. 18, 1934	49 Stat. 2692.
United Arab Republic.	Aug. 11, 1874	Apr. 22, 1875	19 Stat. 572.
United Kingdom.	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	June 8, 1972	Jan. 1, 1977	TIAS 8468.
Uruguay	Mar. 19, 1905	June 4, 1908	35 Stat. 2028.
Venezuela	Jan. 11, 21, 1922.	Apr. 14, 1923	43 Stat. 1698.
Yugoslavia	Oct. 25, 1901	June 12, 1902	32 Stat. 1890.
Zambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.

§ 3186. Secretary of State to surrender fugitive

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

§ 3188. Time of commitment pending extradition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

§ 3189. Place and character of hearing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

§ 3190. Evidence on hearing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

§ 3191. Witnesses for indigent fugitives

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4114 of this title.

§ 3195. Payment of fees and costs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 4114 of this title.

CHAPTER 211—JURISDICTION AND VENUE

Sec.
3244. Jurisdiction of proceedings relating to transferred offenders.

AMENDMENTS

1978—Pub. L. 95-598, title III, § 314(j)(2), Nov. 6, 1978, 92 Stat. 2678, added item 3244.

§ 3244. Jurisdiction of proceedings relating to transferred offenders

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders—

(1) the country in which the offender was convicted shall have exclusive jurisdiction and competence over proceedings seeking to challenge, modify, or set aside convictions or sentences handed down by a court of such country;

(2) all proceedings instituted by or on behalf of an offender transferred from the United States to a foreign country seeking to challenge, modify, or set aside the conviction or sentence upon which the transfer was based shall be brought in the court which would have jurisdiction and competence if the offender had not been transferred;

(3) all proceedings instituted by or on behalf of an offender transferred to the United States pertaining to the manner of execution in the United States of the sentence imposed by a foreign court shall be brought in the United States district court for the district in which the offender is confined or in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings;

(4) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer from the United States shall be brought in the United States district court of the district in which the proceedings to determine the validity of the offender's consent were held and shall name the Attorney General as respondent; and

(5) all proceedings instituted by or on behalf of an offender seeking to challenge the validity or legality of the offender's transfer to the United States shall be brought in the United States district court of the district in which the offender is confined or of the district in which supervision is exercised and shall name the Attorney General and the official having immediate custody or exercising immediate supervision of the offender as respondents. The Attorney General shall defend against such proceedings.

(Added Pub. L. 95-144, § 3, Oct. 28, 1977, 91 Stat. 1220, title 28, § 2256; renumbered Pub. L. 95-598, title III, § 314(j)(1), Nov. 6, 1978, 92 Stat. 2677.)

CODIFICATION

Section was formerly classified to section 2256 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 213—LIMITATIONS

§ 3284. Concealment of bankrupt's assets

The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 314(k), 92 Stat. 2678.)

AMENDMENTS

1978—Pub. L. 95-598 substituted "debtor in a case under title 11" for "bankrupt or other debtor".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATES

Sec.
3401. Misdemeanors; application of probation laws.

AMENDMENTS

1979—Pub. L. 96-82, § 7(c), Oct. 10, 1979, 93 Stat. 646, substituted "Misdemeanors" for "Minor offenses" in item 3401.

§ 3401. Misdemeanors; application of probation laws

(a) When specially designated to exercise such jurisdiction by the district court or courts he serves, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed within that judicial district.

(b) Any person charged with a misdemeanor may elect, however, to be tried before a judge of the district court for the district in which the offense was committed. The magistrate shall carefully explain to the defendant that he has a right to trial, judgment, and sentencing by a judge of the district court and that he may have a right to trial by jury before a district judge or magistrate. The magistrate shall not proceed to try the case unless the defendant, after such explanation, files a written consent to be tried before the magistrate that specifically waives trial, judgment, and sentencing by a judge of the district court.

[*See main edition for text of* (c) *to* (e)]

(f) The district court may order that proceedings in any misdemeanor case be conducted before a district judge rather than a United

States magistrate upon the court's own motion or, for good cause shown, upon petition by the attorney for the Government. Such petition should note the novelty, importance, or complexity of the case, or other pertinent factors, and be filed in accordance with regulations promulgated by the Attorney General.

(g) The magistrate may, in a case involving a youth offender in which consent to trial before a magistrate has been filed under subsection (b) of this section, impose sentence and exercise the other powers granted to the district court under chapter 402 and section 4216 of this title, except that—

(1) the magistrate may not sentence the youth offender to the custody of the Attorney General pursuant to such chapter for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense;

(2) such youth offender shall be released conditionally under supervision no later than 3 months before the expiration of the term imposed by the magistrate, and shall be discharged unconditionally on or before the expiration of the maximum sentence imposed; and

(3) the magistrate may not suspend the imposition of sentence and place the youth offender on probation for a period in excess of 1 year for conviction of a misdemeanor or 6 months for conviction of a petty offense.

(h) The magistrate may, in a petty offense case involving a juvenile in which consent to trial before a magistrate has been filed under subsection (b) of this section, exercise all powers granted to the district court under chapter 403 of this title. For purposes of this subsection, proceedings under chapter 403 of this title may be instituted against a juvenile by a violation notice or complaint, except that no such case may proceed unless the certification referred to in section 5032 of this title has been filed in open court at the arraignment. No term of imprisonment shall be imposed by the magistrate in any such case.

(As amended Oct. 10, 1979, Pub. L. 96–82, § 7(a), (b), 93 Stat. 645.)

AMENDMENTS

1979—Pub. L. 96–82, § 7(b), substituted "Misdemeanors" for "Minor offenses" in section catchline.

Subsec. (a). Pub. L. 96–82, § 7(a)(1), substituted "any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, misdemeanors committed" for "and under such conditions as may be imposed by the terms of the special designation, any United States magistrate shall have jurisdiction to try persons accused of, and sentence persons convicted of, minor offenses committed".

Subsec. (b). Pub. L. 96–82, § 7(a)(2), substituted reference to persons charged with misdemeanors for reference to persons charged with minor offenses, substituted reference to right to trial, judgment, and sentencing for reference to right to trial, and struck out provisions relating to the waiver of the right to a trial by jury.

Subsec. (f). Pub. L. 96–82, § 7(a)(3), substituted provisions authorizing the district court to order misdemeanor proceedings to be conducted before a district court judge for provisions defining the term "minor offenses".

Subsecs. (g), (h). Pub. L. 96–82, § 7(a)(4), added subsecs. (g) and (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 1011; title 16 sections 460d, 460*l*–6a, 551, 670j, 1338; title 28 sections 636, 1915; title 43 section 1733.

CHAPTER 223—WITNESSES AND EVIDENCE

§ 3504. Litigation concerning sources of evidence

(a) In any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, or other authority of the United States—

[*See main edition for text of (1)*]

(2) disclosure of information for a determination if evidence is inadmissible because it is the primary product of an unlawful act occurring prior to June 19, 1968, or because it was obtained by the exploitation of an unlawful act occurring prior to June 19, 1968, shall not be required unless such information may be relevant to a pending claim of such inadmissibility; and

[*See main edition for text of (3); (b); credits*]

CODIFICATION

Subsec. (a)(2) of this section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 229—FINES, PENALTIES AND FORFEITURES

§ 3617. Remission or mitigation of forfeitures under liquor laws; possession pending trial

[*See main edition for text of (a)*]

(b) Conditions precedent to remission or mitigation

In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or finan-

cial standing of such other person, that such other person had no such record or reputation.

[See main edition for text of (c) and (d); credits]

CODIFICATION

Subsec. (b) of this section is set out in this supplement to correct typographical error in the main edition.

CHAPTER 231—PROBATION

§ 3651. Suspension of sentence and probation

[See main edition for text of first to eleventh undesignated pars.]

The court may require a person who is an addict within the meaning of section 4251(a) of this title, or a drug dependent person within the meaning of section 2(q) of the Public Health Service Act, as amended (42 U.S.C. 201), as a condition of probation, to participate in the community supervision programs authorized by section 4255 of this title for all or part of the period of probation.

[See main edition for text of thirteenth undesignated par.]

(As amended Oct. 27, 1978, Pub. L. 95-537, § 2, 92 Stat. 2038.)

AMENDMENTS

1978—Pub. L. 95-537, in the paragraph relating to addicts and drug dependent persons, struck out requirement of certification of program availability by the Attorney General as a prerequisite to participation in community supervision programs and provision which authorized Attorney General to determine effectiveness of treatment of probationer and probationer's effect on other participants and, if effect was adverse, to notify the court so it could make such other provision for the probationer as it deemed appropriate.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-537 provided that "The amendments made by this Act [amending this section and section 4255 of this title] shall take effect on October 1, 1979."

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-537 provided: "That this Act [amending this section and section 4255 of this title, and enacting provisions set out as notes under this section and section 4255 of this title] may be cited as the 'Contract Services for Drug Dependent Federal Offenders Act of 1978'."

§ 3653. Report of probation officer and arrest of probationer

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

CHAPTER 237—RULES OF CRIMINAL PROCEDURE

§ 3771. Procedure to and including verdict

APPROVAL AND EFFECTIVE DATE OF AMENDMENTS PROPOSED APRIL 26, 1976

Section 1 of Pub. L. 95-78, July 30, 1977, 91 Stat. 319, provided: "That notwithstanding the first section of the Act entitled 'An Act to delay the effective date of certain proposed amendments to the Federal Rules of Criminal Procedure and certain other rules promulgated by the United States Supreme Court' (Public Law 94-349, approved July 8, 1976) [90 Stat. 822] the amendments to rules 6(e), 23, 24, 40.1, and 41(c)(2) of the Rules of Criminal Procedure for the United States district courts [set out in the Appendix to this title] which are embraced by the order entered by the United States Supreme Court on April 26, 1976, shall take effect only as provided in this Act [see section 4 of Pub. L. 95-78, set out below]."

EFFECTIVE DATE OF PUB. L. 95-78

Pub. L. 95-78, § 4, July 30, 1977, 91 Stat. 322, provided that:

"(a) The first section of this Act [set out as a note above] shall take effect on the date of the enactment of this Act [July 30, 1977].

"(b) Sections 2 and 3 of this Act [which amended section 1446 of Title 28, Judiciary and Judicial Procedure, approved proposed amendment of rule 23 of the Federal Rules of Criminal Procedure, modified and approved proposed amendment of rules 6 and 41 of the Federal Rules of Criminal Procedure, and disapproved the proposed amendment of rule 24 of the Federal Rules of Criminal Procedure and the proposed addition of rule 40.1 of the Federal Rules of Criminal Procedure] shall take effect October 1, 1977."

AMENDMENTS TO CRIMINAL RULES AND RULES OF EVIDENCE PROPOSED APRIL 30, 1979; POSTPONEMENT OF EFFECTIVE DATE UNTIL AUGUST 1, 1979, AND DECEMBER 1, 1980

Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided: "That notwithstanding any provision of section 3771 or 3772 of title 18 of the United States Code or of section 2072, 2075, or 2076 of title 28 of the United States Code to the contrary—

"(1) the amendments proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, to the Federal Rules of Criminal Procedure affecting rules 11(e)(6), 17(h), 32(f), and 44(c), and adding new rules 26.2 and 32.1, and the amendment so proposed and transmitted to the Federal Rules of Evidence affecting rule 410, shall not take effect until December 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier; and

"(2) the amendment proposed by the United States Supreme Court and transmitted by the Chief Justice on April 30, 1979, affecting rule 40 of the Federal Rules of Criminal Procedure shall take effect on August 1, 1979, with the following amendments:

"(A) In the matter designated as paragraph (1) of subdivision (d), strike out 'in accordance with Rule 32.1(a)'.

"(B) In the matter designated as paragraph (2) of subdivision (d), strike out 'in accordance with Rule 32.1(a)(1)'."

PART III—PRISONS AND PRISONERS

Chap.		Sec.
306.	Transfer to or from Foreign Countries[1]	4100

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 22 section 3852.

[1] Chapter added without adding chapter heading to analysis.

CHAPTER 301—GENERAL PROVISIONS

§ 4001. Limitation on detention; control of prisons

USE OF INACTIVE DEPARTMENT OF DEFENSE FACILITIES AS PRISONS

Pub. L. 95-624, § 9, Nov. 9, 1978, 92 Stat. 3463, provided that: "The Attorney General shall consult with the Secretary of Defense in order to develop a plan to assure that such suitable facilities as the Department of Defense operates which are not in active use shall be made available for operation by the Department of Justice for the confinement of United States prisoners. Such plan shall provide for the return to the management of the Department of Defense of any such facility upon a finding by the Secretary of Defense that such return is necessary to the operation of the Department."

§ 4002. Federal prisoners in State institutions; employment

For the purpose of providing suitable quarters for the safekeeping, care, and subsistence of all persons held under authority of any enactment of Congress, the Attorney General may contract, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of such persons.

[*See main edition for text of second and third pars.*]

(As amended Nov. 9, 1978, Pub. L. 95-624, § 8, 92 Stat. 3463.)

AMENDMENTS

1978—Pub. L. 95-624 substituted "Attorney General" for "Director of the Bureau of Prisons".

§ 4005. Medical relief; expenses

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 305—COMMITMENT AND TRANSFER

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 955.

§ 4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

NATIONAL TRAINING SCHOOL FOR BOYS

The National Training School for Boys was governed and managed by a Board of Trustees until July 1, 1939, at which time 1939 Reorg. Plan No. 2 (4 F.R. 2731, 53 Stat. 1431) abolished the Board of Trustees and transferred the School and its functions (including the functions of the Board of Trustees) to the Department of Justice, to be administered by the Director of the Bureau of Prisons, under the direction and supervision of the Attorney General. The School was so operated until May 15, 1968, when it was closed pursuant to order of the Attorney General.

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

Sec.
4100. Scope and limitation of chapter.
4101. Definitions.
4102. Authority of the Attorney General.
4103. Applicability of United States laws.
4104. Transfer of offenders on probation.
4105. Transfer of offenders serving sentence of imprisonment.
4106. Transfer of offenders on parole; parole of offenders transferred.
4107. Verification of consent of offender to transfer from the United States.
4108. Verification of consent of offender to transfer to the United States.
4109. Right to counsel, appointment of counsel.
4110. Transfer of juveniles.
4111. Prosecution barred by foreign conviction.
4112. Loss of rights, disqualification.
4113. Status of alien offender transferred to a foreign country.
4114. Return of transferred offenders.
4115. Execution of sentences imposing an obligation to make restitution or reparations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 10 section 955.

§ 4100. Scope and limitation of chapter

(a) The provisions of this chapter relating to the transfer of offenders shall be applicable only when a treaty providing for such a transfer is in force, and shall only be applicable to transfers of offenders to and from a foreign country pursuant to such a treaty. A sentence imposed by a foreign country upon an offender who is subsequently transferred to the United States pursuant to a treaty shall be subject to being fully executed in the United States even though the treaty under which the offender was transferred is no longer in force.

(b) An offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national. Only an offender who is a citizen or national of the United States may be transferred to the United States. An offender may be transferred to or from the United States only with the offender's consent, and only if the offense for which the offender was sentenced satisfies the requirement of double criminality as defined in this chapter. Once an offender's consent to transfer has been verified by a verifying officer, that consent shall be irrevocable. If at the time of transfer the offender is under eighteen years of age the transfer shall not be accomplished unless consent to the transfer be given by a parent or guardian or by an appropriate court of the sentencing country.

(c) An offender shall not be transferred to or from the United States if a proceeding by way of appeal or of collateral attack upon the conviction or sentence be pending.

(d) The United States upon receiving notice from the country which imposed the sentence that the offender has been granted a pardon, commutation, or amnesty, or that there has been an ameliorating modification or a revocation of the sentence shall give the offender the benefit of the action taken by the sentencing country.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1212.)

AUTHORIZATION OF APPROPRIATIONS

Section 5(a) of Pub. L. 95-144 provided that: "There is authorized to be appropriated such funds as may be

required to carry out the purposes of this Act [which enacted this chapter and sections 955 of Title 10, Armed Forces, and 2256 of Title 28, Judiciary and Judicial Procedure, amended section 636 of Title 28, and enacted provisions set out as notes under sections 3006A, 4100, and 4102 of this title]".

§ 4101. Definitions

As used in this chapter the term—

(a) "double criminality" means that at the time of transfer of an offender the offense for which he has been sentenced is still an offense in the transferring country and is also an offense in the receiving country. With regard to a country which has a federal form of government, an act shall be deemed to be an offense in that country if it is an offense under the federal laws or the laws of any state or province thereof;

(b) "imprisonment" means a penalty imposed by a court under which the individual is confined to an institution;

(c) "juvenile" means—

(1) a person who is under eighteen years of age; or

(2) for the purpose of proceedings and disposition under chapter 403 of this title because of an act of juvenile delinquency, a person who is under twenty-one years of age;

(d) "juvenile delinquency" means—

(1) a violation of the laws of the United States or a State thereof or of a foreign country committed by a juvenile which would have been a crime if committed by an adult; or

(2) noncriminal acts committed by a juvenile for which supervision or treatment by juvenile authorities of the United States, a State thereof, or of the foreign country concerned is authorized;

(e) "offender" means a person who has been convicted of an offense or who has been adjudged to have committed an act of juvenile delinquency;

(f) "parole" means any form of release of an offender from imprisonment to the community by a releasing authority prior to the expiration of his sentence, subject to conditions imposed by the releasing authority and to its supervision;

(g) "probation" means any form of a sentence to a penalty of imprisonment the execution of which is suspended and the offender is permitted to remain at liberty under supervision and subject to conditions for the breach of which the suspended penalty of imprisonment may be ordered executed;

(h) "sentence" means not only the penalty imposed but also the judgment of conviction in a criminal case or a judgment of acquittal in the same proceeding, or the adjudication of delinquency in a juvenile delinquency proceeding or dismissal of allegations of delinquency in the same proceedings;

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;

(j) "transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the courts of another country; and

(k) "treaty" means a treaty under which an offender sentenced in the courts of one country may be transferred to the country of which he is a citizen or national for the purpose of serving the sentence.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1213.)

§ 4102. Authority of the Attorney General

The Attorney General is authorized—

(1) to act on behalf of the United States as the authority referred to in a treaty;

(2) to receive custody of offenders under a sentence of imprisonment, on parole, or on probation who are citizens or nationals of the United States transferred from foreign countries and as appropriate confine them in penal or correctional institutions, or assign them to the parole or probation authorities for supervision;

(3) to transfer offenders under a sentence of imprisonment, on parole, or on probation to the foreign countries of which they are citizens or nationals;

(4) to make regulations for the proper implementation of such treaties in accordance with this chapter and to make regulations to implement this chapter;

(5) to render to foreign countries and to receive from them the certifications and reports required to be made under such treaties;

(6) to make arrangements by agreement with the States for the transfer of offenders in their custody who are citizens or nationals of foreign countries to the foreign countries of which they are citizens or nationals and for the confinement, where appropriate, in State institutions of offenders transferred to the United States;

(7) to make agreements and establish regulations for the transportation through the territory of the United States of offenders convicted in a foreign country who are being transported to a third country for the execution of their sentences, the expenses of which shall be paid by the country requesting the transportation;

(8) to make agreements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of juveniles who are transferred pursuant to treaty, the expenses of which shall be paid by the country of which the juvenile is a citizen or national;

(9) in concert with the Secretary of Health, Education, and Welfare, to make arrangements with the appropriate authorities of a foreign country and to issue regulations for the transfer and treatment of individuals who are accused of an offense but who have been determined to be mentally ill; the expenses of which shall be paid by the country of which such person is a citizen or national;

(10) to designate agents to receive, on behalf of the United States, the delivery by a foreign government of any citizen or national of the United States being transferred to the United States for the purpose of serving a

sentence imposed by the courts of the foreign country, and to convey him to the place designated by the Attorney General. Such agent shall have all the powers of a marshal of the United States in the several districts through which it may be necessary for him to pass with the offender, so far as such power is requisite for the offender's transfer and safekeeping; within the territory of a foreign country such agent shall have such powers as the authorities of the foreign country may accord him;

(11) to delegate the authority conferred by this chapter to officers of the Department of Justice.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1214.)

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

CERTIFICATION BY ATTORNEY GENERAL TO SECRETARY OF STATE FOR REIMBURSEMENT OF EXPENSES INCURRED UNDER TRANSFER TREATY

Section 5(b) of Pub. L. 95-144 provided that: "The Attorney General shall certify to the Secretary of State the expenses of the United States related to the return of an offender to the foreign country of which the offender is a citizen or national for which the United States is entitled to seek reimbursement from that country under a treaty providing for transfer and reimbursement."

§ 4103. Applicability of United States laws

All laws of the United States, as appropriate, pertaining to prisoners, probationers, parolees, and juvenile offenders shall be applicable to offenders transferred to the United States, unless a treaty or this chapter provides otherwise.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4104. Transfer of offenders on probation

(a) Prior to consenting to the transfer to the United States of an offender who is on probation, the Attorney General shall determine that the appropriate United States district court is willing to undertake the supervision of the offender.

(b) Upon the receipt of an offender on probation from the authorities of a foreign country, the Attorney General shall cause the offender to be brought before the United States district court which is to exercise supervision over the offender.

(c) The court shall place the offender under supervision of the probation officer of the court. The offender shall be supervised by a probation officer, under such conditions as are deemed appropriate by the court as though probation had been imposed by the United States district court.

(d) The probation may be revoked in accordance with section 3653 of this title and rule 32(f) of the Federal Rules of Criminal Procedure. A violation of the conditions of probation shall constitute grounds for revocation. If probation is revoked the suspended sentence imposed by the sentencing court shall be executed.

(e) The provisions of sections 4105 and 4106 of this title shall be applicable following a revocation of probation.

(f) Prior to consenting to the transfer from the United States of an offender who is on probation, the Attorney General shall obtain the assent of the court exercising jurisdiction over the probationer.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

§ 4105. Transfer of offenders serving sentence of imprisonment

(a) Except as provided elsewhere in this section, an offender serving a sentence of imprisonment in a foreign country transferred to the custody of the Attorney General shall remain in the custody of the Attorney General under the same conditions and for the same period of time as an offender who had been committed to the custody of the Attorney General by a court of the United States for the period of time imposed by the sentencing court.

(b) The transferred offender shall be given credit toward service of the sentence for any days, prior to the date of commencement of the sentence, spent in custody in connection with the offense or acts for which the sentence was imposed.

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits for good time, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 4161 of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 4164 of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 4161 of this title.

(3) A transferred offender may earn extra good time deductions, as authorized in section 4162 of this title, from the time of transfer.

(4) All credits toward service of the sentence, other than the credit for time in custody before sentencing, may be forfeited as provided in section 4165 of this title and may be restored by the Attorney General as provided in section 4166 of this title.

(5) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1215.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205(d), (e), and (h); 4206 through 4216; and 4218 of this title shall be applicable.

(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4104 of this title.

§ 4107. Verification of consent of offender to transfer from the United States

(a) Prior to the transfer of an offender from the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified by a United States magistrate or a judge as defined in section 451 of title 28, United States Code.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the appropriate courts in the United States may modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in such courts;

(2) the sentence shall be carried out according to the laws of the country to which he is to be transferred and that those laws are subject to change;

(3) if a court in the country to which he is transferred should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of that country, he may be returned to the United States for the purpose of completing the sentence if the United States requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1216.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4109 of this title; title 28 section 636.

§ 4108. Verification of consent of offender to transfer to the United States

(a) Prior to the transfer of an offender to the United States, the fact that the offender consents to such transfer and that such consent is voluntary and with full knowledge of the consequences thereof shall be verified in the country in which the sentence was imposed by a United States magistrate, or by a citizen specifically designated by a judge of the United States as defined in section 451 of title 28, United States Code. The designation of a citizen who is an employee or officer of a department or agency of the United States shall be with the approval of the head of that department or agency.

(b) The verifying officer shall inquire of the offender whether he understands and agrees that the transfer will be subject to the following conditions:

(1) only the country in which he was convicted and sentenced can modify or set aside the conviction or sentence, and any proceedings seeking such action may only be brought in that country;

(2) the sentence shall be carried out according to the laws of the United States and that those laws are subject to change;

(3) if a United States court should determine upon a proceeding initiated by him or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the United States, he may be returned to the country which imposed the sentence for the purpose of completing the sentence if that country requests his return; and

(4) his consent to transfer, once verified by the verifying officer, is irrevocable.

(c) The verifying officer, before determining that an offender's consent is voluntary and given with full knowledge of the consequences, shall advise the offender of his right to consult with counsel as provided by this chapter. If the offender wishes to consult with counsel before

giving his consent, he shall be advised that the proceedings will be continued until he has had an opportunity to consult with counsel.

(d) The verifying officer shall make the necessary inquiries to determine that the offender's consent is voluntary and not the result of any promises, threats, or other improper inducements, and that the offender accepts the transfer subject to the conditions set forth in subsection (b). The consent and acceptance shall be on an appropriate form prescribed by the Attorney General.

(e) The proceedings shall be taken down by a reporter or recorded by suitable sound recording equipment. The Attorney General shall maintain custody of the records.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1217.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 636.

§ 4109. Right to counsel, appointment of counsel

In proceedings to verify consent of an offender for transfer, the offender shall have the right to advice of counsel. If the offender is financially unable to obtain counsel—

(1) counsel for proceedings conducted under section 4107 shall be appointed in accordance with the Criminal Justice Act (18 U.S.C. 3006A). Such appointment shall be considered an appointment in a misdemeanor case for purposes of compensation under the Act;

(2) counsel for proceedings conducted under section 4108 shall be appointed by the verifying officer pursuant to such regulations as may be prescribed by the Director of the Administrative Office of the United States Courts. The Secretary of State shall make payments of fees and expenses of the appointed counsel, in amounts approved by the verifying officer, which shall not exceed the amounts authorized under the Criminal Justice Act (18 U.S.C. 3006(a)[1] for representation in a misdemeanor case. Payment in excess of the maximum amount authorized may be made for extended or complex representation whenever the verifying officer certifies that the amount of the excess payment is necessary to provide fair compensation, and the payment is approved by the chief judge of the United States court of appeals for the appropriate circuit. Counsel from other agencies in any branch of the Government may be appointed: *Provided*, That in such cases the Secretary of State shall pay counsel directly, or reimburse the employing agency for travel and transportation expenses. Notwithstanding section 3648 of the revised statutes as amended (31 U.S.C. 529), the Secretary may make advance payments of travel and transportation expenses to counsel appointed under this subsection.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

REFERENCES IN TEXT

The Criminal Justice Act, referred to in text, probably means Pub. L. 88-455, Aug. 20, 1964, 78 Stat. 552, as amended, known as the Criminal Justice Act of 1964, which enacted section 3006A of this title, and provisions set out as notes under section 3006A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3006A of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 636.

§ 4110. Transfer of juveniles

An offender transferred to the United States because of an act which would have been an act of juvenile delinquency had it been committed in the United States or any State thereof shall be subject to the provisions of chapter 403 of this title except as otherwise provided in the relevant treaty or in an agreement pursuant to such treaty between the Attorney General and the authority of the foreign country.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4111. Prosecution barred by foreign conviction

An offender transferred to the United States shall not be detained, prosecuted, tried, or sentenced by the United States, or any State thereof for any offense the prosecution of which would have been barred if the sentence upon which the transfer was based had been by a court of the jurisdiction seeking to prosecute the transferred offender, or if prosecution would have been barred by the laws of the jurisdiction seeking to prosecute the transferred offender if the sentence on which the transfer was based had been issued by a court of the United States or by a court of another State.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4112. Loss of rights, disqualification

An offender transferred to the United States to serve a sentence imposed by a foreign court shall not incur any loss of civil, political, or civic rights nor incur any disqualification other than those which under the laws of the United States or of the State in which the issue arises would result from the fact of the conviction in the foreign country.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1218.)

§ 4113. Status of alien offender transferred to a foreign country

(a) An alien who is deportable from the United States but who has been granted voluntary departure pursuant to section 1252(b) or section 1254(e) of title 8, United States Code, and who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have voluntarily departed from this country.

(b) An alien who is the subject of an order of deportation from the United States pursuant to section 1252 of title 8, United States Code, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been deported from this country.

(c) An alien who is the subject of an order of exclusion and deportation from the United

[1] So in original. Probably should read "(18 U.S.C. 3006A)".

States pursuant to section 1226 of title 8, United States Code, who is transferred to a foreign country pursuant to this chapter shall be deemed for all purposes to have been excluded from admission and deported from the United States.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219.)

§ 4114. Return of transferred offenders

(a) Upon a final decision by the courts of the United States that the transfer of the offender to the United States was not in accordance with the treaty or the laws of the United States and ordering the offender released from serving the sentence in the United States the offender may be returned to the country from which he was transferred to complete the sentence if the country in which the sentence was imposed requests his return. The Attorney General shall notify the appropriate authority of the country which imposed the sentence, within ten days, of a final decision of a court of the United States ordering the offender released. The notification shall specify the time within which the sentencing country must request the return of the offender which shall be no longer than thirty days.

(b) Upon receiving a request from the sentencing country that the offender ordered released be returned for the completion of his sentence, the Attorney General may file a complaint for the return of the offender with any justice or judge of the United States or any authorized magistrate within whose jurisdiction the offender is found. The complaint shall be upon oath and supported by affidavits establishing that the offender was convicted and sentenced by the courts of the country to which his return is requested; the offender was transferred to the United States for the execution of his sentence; the offender was ordered released by a court of the United States before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or the laws of the United States; and that the sentencing country has requested that he be returned for the completion of the sentence. There shall be attached to the complaint a copy of the sentence of the sentencing court and of the decision of the court which ordered the offender released.

A summons or a warrant shall be issued by the justice, judge or magistrate ordering the offender to appear or to be brought before the issuing authority. If the justice, judge, or magistrate finds that the person before him is the offender described in the complaint and that the facts alleged in the complaint are true, he shall issue a warrant for commitment of the offender to the custody of the Attorney General until surrender shall be made. The findings and a copy of all the testimony taken before him and of all documents introduced before him shall be transmitted to the Secretary of State, that a Return Warrant may issue upon the requisition of the proper authorities of the sentencing country, for the surrender of offender.

(c) A complaint referred to in subsection (b) must be filed within sixty days from the date on which the decision ordering the release of the offender becomes final.

(d) An offender returned under this section shall be subject to the jurisdiction of the country to which he is returned for all purposes.

(e) The return of an offender shall be conditioned upon the offender being given credit toward service of the sentence for the time spent in the custody of or under the supervision of the United States.

(f) Sections 3186, 3188 through 3191, and 3195 of this title shall be applicable to the return of an offender under this section. However, an offender returned under this section shall not be deemed to have been extradited for any purpose.

(g) An offender whose return is sought pursuant to this section may be admitted to bail or be released on his own recognizance at any stage of the proceedings.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1219.)

§ 4115. Execution of sentences imposing an obligation to make restitution or reparations

If in a sentence issued in a penal proceeding of a transferring country an offender transferred to the United States has been ordered to pay a sum of money to the victim of the offense for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

(Added Pub. L. 95-144, § 1, Oct. 28, 1977, 91 Stat. 1220.)

CHAPTER 307—EMPLOYMENT

§ 4121. Federal Prison Industries; board of directors

CLOSURE OF MCNEIL ISLAND PENITENTIARY; REPORT ON STATUS OF FEDERAL PRISON INDUSTRIES

Pub. L. 95-624, § 10, Nov. 9, 1978, 92 Stat. 3463, provided that:

"(a) On or before September 1, 1979, the Attorney General shall submit to the Congress—

"(1) a plan to assure the closure of the United States Penitentiary on McNeil Island, Steilacoom, Washington, on or before January 1, 1982; and

"(2) a report on the status of the Federal Prison Industries.

"(b) The report made under this section shall include a long-range plan for the improvement of meaningful employment training, and the methods which could be undertaken to employ a greater number of United States prisoners in the program. Such report may include recommendations for legislation."

CHAPTER 309—GOOD TIME ALLOWANCES

§ 4161. Computation generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4105 of this title.

§ 4162. Industrial good time

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4105 of this title; title 41 section 42.

§ 4164. Released prisoner as parolee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4105, 4201, 4205, 4210 of this title.

§ 4165. Forfeiture for offense

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4105 of this title.

§ 4166. Restoration of forfeited commutation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4105 of this title.

CHAPTER 311—PAROLE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 4255, 5005 of this title.

§ 4201. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4202. Parole Commission created

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title; title 21 section 848.

§ 4203. Powers and duties of the Commission

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4201, 4204, 4206, 4218, 5005 of this title.

§ 4204. Powers and duties of the Chairman

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4205. Time of eligibility for release on parole

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4201, 4208 of this title.

§ 4206. Parole determination criteria

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4215, 5017, 5041 of this title.

§ 4207. Information considered

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4208. Parole determination proceeding; time

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4209. Conditions of parole

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4213, 4215 of this title.

§ 4210. Jurisdiction of Commission

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4211 of this title.

§ 4211. Early termination of parole

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4210, 4215 of this title.

§ 4212. Aliens

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4213. Summons to appear or warrant for retaking of parolee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4214 of this title.

§ 4214. Revocation of parole

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4203, 4209, 4210, 4211, 4213, 4215 of this title.

§ 4215. Reconsideration and appeal

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

§ 4216. Young adult offenders

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3401, 4106 of this title.

§ 4218. Applicability of Administrative Procedure Act

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4106 of this title.

CHAPTER 313—MENTAL DEFECTIVES

§ 4241. Examination and transfer to hospital

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out in the Appendix to Title 5, Government Organization and Employees. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 314—NARCOTIC ADDICTS

§ 4254. Conditional release

ABOLITION OF OFFICE OF SURGEON GENERAL

The Office of the Surgeon General was abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25,

1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof were transferred to the Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out in the Appendix to Title 5, Government Organization and Employees. The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 4255. Supervision in the community

An offender who has been conditionally released shall be under the jurisdiction of the United States Parole Commission as if on parole, pursuant to chapter 311 of this title.

The Director of the Administrative Office of the United States Courts may contract with any appropriate public or private agency or any person for supervisory aftercare of an offender. The Director may negotiate and award such contracts without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(As amended Pub. L. 95-537, § 3, Oct. 27, 1978, 92 Stat. 2038.)

AMENDMENTS

1978—Pub. L. 95-537 substituted provision that an offender who has been conditionally released shall be under the jurisdiction of the United States Parole Commission for provision that such offender would be under the jurisdiction of the Board of Parole and would remain in the legal custody of the Attorney General, substituted the Director of the Administrative Office of the United States Courts for the Attorney General as the person authorized to contract for supervisory aftercare of an offender, added provision that the Director may negotiate and award such contracts without regard to section 5 of title 41, and struck out provisions relating to an arrest warrant for a conditional release violator and to the procedure for Board revocation of the conditional release order.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-537 effective Oct. 1, 1979, see section 4(b) of Pub. L. 95-537 set out as an Effective Date of 1978 Amendment note under section 3651 of this title.

AUTHORIZATION OF APPROPRIATIONS

Section 4(a) of Pub. L. 95-537 provided that: "To carry out the purposes of this Act [amending this section and section 3651 of this title and enacting provisions set out as notes under section 3651 of this title], there are authorized to be appropriated sums not to exceed $3,500,000 for the fiscal year ending September 30, 1980; $3,645,000 for the fiscal year ending September 30, 1981; and $3,750,000 for the fiscal year ending September 30, 1982."

CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

Sec.
4285. Persons released pending further judicial proceedings.

AMENDMENTS

1978—Pub. L. 95-503, § 2, Oct. 24, 1978, 92 Stat. 1704, added item 4285.

§ 4285. Persons released pending further judicial proceedings

Any judge or magistrate of the United States, when ordering a person released under chapter 207 on a condition of his subsequent appearance before that court, any division of that court, or any court of the United States in another judicial district in which criminal proceedings are pending, may, when the interests of justice would be served thereby and the United States judge or magistrate is satisfied, after appropriate inquiry, that the defendant is financially unable to provide the necessary transportation to appear before the required court on his own, direct the United States marshal to arrange for that person's means of noncustodial transportation or furnish the fare for such transportation to the place where his appearance is required, and in addition may direct the United States marshal to furnish that person with an amount of money for subsistence expenses to his destination, not to exceed the amount authorized as a per diem allowance for travel under section 5702(a) of title 5, United States Code. When so ordered, such expenses shall be paid by the marshal out of funds authorized by the Attorney General for such expenses.

(Added Pub. L. 95-503, § 1, Oct. 24, 1978, 92 Stat. 1704.)

EFFECTIVE DATE

Section 3 of Pub. L. 95-503 provided that: "The amendments made by this Act [enacting this section] shall take effect on October 1, 1978."

CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers [1]

[See main edition for text of (a)]

(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Administrator of the Law Enforcement Assistance Administration or his designee, Chairman of the United States Parole Board or his designee, the Director of the Federal Judicial Center or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

[See main edition for text of (c) to (h)]

(As amended Pub. L. 95-115, § 8(a), Oct. 3, 1977, 91 Stat. 1060.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-115 substituted "Associate" for "Deputy Assistant" and "Office of" for "National Institute for".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

[1] Section catchline editorially inserted as section was enacted without a catchline.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 to take effect on Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of Title 42, The Public Health and Welfare.

PART IV—CORRECTION OF YOUTHFUL OFFENDERS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 22 section 3852.

CHAPTER 402—FEDERAL YOUTH CORRECTIONS ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3401, 4216 of this title; title 42 section 257.

CHAPTER 403—JUVENILE DELINQUENCY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3401, 4101, 4110, 4216 of this title; title 42 section 257.

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 751, 3401 of this title.

§ 5037. Dispositional hearing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5038 of this title.

§ 5038. Use of juvenile records

(a) Throughout the juvenile delinquency proceeding the court shall safeguard the records from disclosure. Upon the completion of any juvenile delinquency proceeding whether or not there is an adjudication the district court shall order the entire file and record of such proceeding sealed. After such sealing, the court shall not release these records except to the extent necessary to meet the following circumstances:

[*See main edition for text of* (1) *to* (3)]

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the sealed record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 95-115, § 8(b), Oct. 3, 1977, 91 Stat. 1060.)

AMENDMENT

1977—Subsec. (a)(6). Pub. L. 95-115 added par. (6).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 to take effect on Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of Title 42, The Public Health and Welfare.

PART V—IMMUNITY OF WITNESSES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 7 section 2146; title 11 section 344; title 15 section 1312.

§ 6001. Definitions

As used in this part—

(1) "agency of the United States" means any executive department as defined in section 101 of title 5, United States Code, a military department as defined in section 102 of title 5, United States Code, the Atomic Energy Commission, the China Trade Act registrar appointed under 53 Stat. 1432 (15 U.S.C. sec. 143), the Civil Aeronautics Board, the Commodity Futures Trading Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Maritime Commission, the Federal Power Commission, the Federal Trade Commission, the Interstate Commerce Commission, the National Labor Relations Board, the National Transportation Safety Board, the Railroad Retirement Board, an arbitration board established under 48 Stat. 1193 (45 U.S.C. sec. 157), the Securities and Exchange Commission, the Subversive Activities Control Board, or a board established under 49 Stat. 31 (15 U.S.C. sec. 715d);

[*See main edition for text of* (2) *and* (3)]

(4) "court of the United States" means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court established under chapter 5, title 28, United States Code, a United States bankruptcy court established under chapter 6, title 28, United States Code, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, the Tax Court of the United States, the Customs Court, and the Court of Military Appeals.

(As amended Pub. L. 95-405, § 25, Sept. 30, 1978, 92 Stat. 877; Pub. L. 95-598, title III, § 314(*l*), Nov. 6, 1978, 92 Stat. 2678.)

AMENDMENTS

1978—Par. (1). Pub. L. 95-405 inserted "the Commodity Futures Trading Commission," following "Civil Aeronautics Board,".

Par. (4). Pub. L. 95-598 inserted "a United States bankruptcy court established under chapter 6, title 28, United States Code," following "title 28, United States Code,".

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of Title 7, Agriculture.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

ABOLITION OF THE ATOMIC ENERGY COMMISSION

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

TERMINATION OF FEDERAL POWER COMMISSION

The Federal Power Commission, referred to in par. (1) was terminated and the functions, personnel, property, funds, etc., thereof were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

§ 6002. Immunity generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6003, 6004, 6005 of this title; title 50 App. section 2411.

§ 6003. Court and grand jury proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 594.

§ 6004. Certain administrative proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 594.

§ 6005. Congressional proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 288f; title 28 section 594.

TITLE 18—APPENDIX

RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

As amended to January 1, 1980

III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury

[See main edition for text of (a) to (d)]

(e) Recording and Disclosure of Proceedings

(1) *Recording of proceedings.* All proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device. An unintentional failure of any recording to reproduce all or any portion of a proceeding shall not affect the validity of the prosecution. The recording or reporter's notes or any transcript prepared therefrom shall remain in the custody or control of the attorney for the government unless otherwise ordered by the court in a particular case.

(2) *General rule of secrecy.* A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

(3) *Exceptions.*

(A) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror, may be made to—

(i) an attorney for the government for use in the performance of such attorney's duty; and

(ii) such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce federal criminal law.

(B) Any person to whom matters are disclosed under subparagraph (A)(ii) of this paragraph shall not utilize that grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce federal criminal law. An attorney for the government shall promptly provide the district court, before which was impaneled the grand jury whose material has been so disclosed, with the names of the persons to whom such disclosure has been made.

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(4) *Sealed indictments.* The federal magistrate to whom an indictment is returned may direct that the indictment be kept secret until the defendant is in custody or has been released pending trial. Thereupon the clerk shall seal the indictment and no person shall disclose the return of the indictment except when necessary for the issuance and execution of a warrant or summons.

[See main edition for text of (f) and (g)]

(As amended July 30, 1977, Pub. L. 95-78, § 2(a), 91 Stat. 319; Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON RULES

1977 AMENDMENT

The proposed definition of "attorneys for the government" in subdivision (e) is designed to facilitate an increasing need, on the part of government attorneys, to make use of outside expertise in complex litigation. The phrase "other government personnel" includes, but is not limited to, employees of administrative agencies and government departments.

Present subdivision (e) provides for disclosure "to the attorneys for the government for use in the performance of their duties." This limitation is designed to further "the long established policy that maintains the secrecy of the grand jury in federal courts." *United States* v. *Procter and Gamble Co.*, 356 U.S. 677 (1958).

As defined in rule 54(c), "'Attorney for the government means the Attorney General, an authorized assistant of the Attorney General, a United States Attorney, an authorized assistant of a United States At-

torney and when applicable to cases arising under the laws of Guam * * *." The limited nature of this definition is pointed out in *In re Grand Jury Proceedings*, 309 F. 2d 440 (3d Cir. 1962) at 443:

> The term attorneys for the government is restrictive in its application. * * * If it had been intended that the attorneys for the administrative agencies were to have free access to matters occurring before a grand jury, the rule would have so provided.

The proposed amendment reflects the fact that there is often government personnel assisting the Justice Department in grand jury proceedings. In *In re Grand Jury Investigation of William H. Pflaumer & Sons, Inc.*, 53 F.R.D. 464 (E.D. Pa. 1971), the opinion quoted the United States Attorney:

> It is absolutely necessary in grand jury investigations involving analysis of books and records, for the government attorneys to rely upon investigative personnel (from the government agencies) for assistance.

See also 8 J. Moore, Federal Practice ¶6.05 at 6-28 (2d ed. Cipes, 1969):

> The rule [6(e)] has presented a problem, however, with respect to attorneys and nonattorneys who are assisting in preparation of a case for the grand jury. * * * These assistants often cannot properly perform their work without having access to grand jury minutes.

Although case law is limited, the trend seems to be in the direction of allowing disclosure to government personnel who assist attorneys for the government in situations where their expertise is required. This is subject to the qualification that the matters disclosed be used only for the purposes of the grand jury investigation. The court may inquire as to the good faith of the assisting personnel, to ensure that access to material is not merely a subterfuge to gather evidence unattainable by means other than the grand jury. This approach was taken in *In re Grand Jury Investigation of William H. Pflaumer & Sons, Inc.*, 53 F.R.D. 464 (E.D. Pa. 1971); *In re April 1956 Term Grand Jury*, 239 F. 2d 263 (7th Cir. 1956); *United States* v. *Anzelimo*, 319 F. Supp. 1106 (D.C. La. 1970). Another case, *Application of Kelly*, 19 F.R.D. 269 (S.D.N.Y. 1956), assumed, without deciding, that assistance given the attorney for the government by IRS and FBI agents was authorized.

The change at line 27 reflects the fact that under the Bail Reform Act of 1966 some persons will be released without requiring bail. See 18 U.S.C. §§ 3146, 3148.

Under the proposed amendment to rule 6(f), an indictment may be returned to a federal magistrate. ("Federal magistrate" is defined in rule 54(c) as including a United States magistrate as defined in 28 U.S.C. § 631-639 and a judge of the United States.) This change will foreclose the possibility of noncompliance with the Speedy Trial Act timetable because of the nonavailability of a judge. Upon the effective date of certain provisions of the Speedy Trial Act of 1974, the timely return of indictments will become a matter of critical importance; for the year commencing July 1, 1976, indictments must be returned within 60 days of arrest or summons, for the year following within 45 days, and thereafter within 30 days. 18 U.S.C. §§ 3161(b) and (f), 3162(a). The problem is acute in a one-judge district where, if the judge is holding court in another part of the district, or is otherwise absent, the return of the indictment must await the later reappearance of the judge at the place where the grand jury is sitting.

A corresponding change has been made to that part of subdivision (f) which concerns the reporting of a "no bill," and to that part of subdivision (e) which concerns keeping an indictment secret.

The change in the third sentence of rule 6(f) is made so as to cover all situations in which by virtue of a pending complaint or information the defendant is in custody or released under some form of conditional release.

1979 Amendment

Note to Subdivision (e)(1)

Proposed subdivision (e)(1) requires that all proceedings, except when the grand jury is deliberating or voting, be recorded. The existing rule does not require that grand jury proceedings be recorded. The provision in rule 6(d) that "a stenographer or operator of a recording device may be present while the grand jury is in session" has been taken to mean that recordation is permissive and not mandatory; see *United States* v. *Aloisio*, 440 F.2d 705 (7th Cir. 1971), collecting the cases. However, the cases rather frequently state that recordation of the proceedings is the better practice; see *United States* v. *Aloisio*, supra; *United States* v. *Cramer*, 447 F.2d 210 (2d Cir. 1971), *Schlinsky* v. *United States*, 379 F.2d 735 (1st Cir. 1967); and some cases require the district court, after a demand to exercise discretion as to whether the proceedings should be recorded. *United States* v. *Price*, 474 F.2d 1223 (9th Cir. 1973); *United States* v. *Thoresen*, 428 F.2d 654 (9th Cir. 1970). Some district courts have adopted a recording requirement. See e.g. *United States* v. *Aloisio*, supra; *United States* v. *Gramolini*, 301 F.Supp. 39 (D.R.I. 1969). Recording of grand jury proceedings is currently a requirement in a number of states. See, e.g., Cal.Pen.Code §§ 938-938.3; Iowa Code Ann. § 772.4; Ky.Rev.Stat.Ann. § 28.460; and Ky.R.Crim.P. § 5.16(2).

The assumption underlying the proposal is that the cost of such recording is justified by the contribution made to the improved administration of criminal justice. See *United States* v. *Gramolini*, supra, noting: "Nor can it be claimed that the cost of recordation is prohibitive; in an electronic age, the cost of recordation must be categorized as miniscule." For a discussion of the success of electronic recording in Alaska, see Reynolds, Alaska's Ten Years of Electronic Reporting, 56 A.B.A.J. 1080 (1970).

Among the benefits to be derived from a recordation requirement are the following:

(1) Ensuring that the defendant may impeach a prosecution witness on the basis of his prior inconsistent statements before the grand jury. As noted in the opinion of Oakes, J., in *United States* v. *Cramer:* "First since *Dennis* v. *United States*, 384 U.S. 855, 86 S.Ct. 1840, 16 L.Ed.2d 973 (1966), a defendant has been entitled to examine the grand jury testimony of witnesses against him. On this point, the Court was unanimous, holding that there was 'no justification' for the District of Columbia Court of Appeals' 'relying upon [the] "assumption"' that 'no inconsistencies would have come to light.' The Court's decision was based on the general proposition that '[i]n our adversary system for determining guilt or innocence, it is rarely justifiable for the prosecution to have exclusive access to a storehouse of relevant facts.' In the case at bar the prosecution did have exclusive access to the grand jury testimony of the witness Sager, by virtue of being present, and the defense had none—to determine whether there were any inconsistencies with, say, his subsequent testimony as to damaging admissions by the defendant and his attorney Richard Thaler. The Government claims, and it is supported by the majority here, that there is no problem since defendants were given the benefit of Sager's subsequent statements including these admissions as Jencks Act materials. But assuming this to be true, it does not cure the basic infirmity that the defense could not know whether the witness testified inconsistently before the grand jury."

(2) Ensuring that the testimony received by the grand jury is trustworthy. In *United States* v. *Cramer*, Oakes, J., also observed: "The recording of testimony is in a very real sense a circumstantial guaranty of trustworthiness. Without the restraint of being subject to prosecution for perjury, a restraint which is wholly meaningless or nonexistent if the testimony is unrecorded, a witness may make baseless accusations founded on hearsay or false accusations, all resulting in the indictment of a fellow citizen for a crime."

(3) Restraining prosecutorial abuses before the grand jury. As noted in *United States* v. *Gramolini:* "In no way does recordation inhibit the grand jury's investigation. True, recordation restrains certain prosecutorial practices which might, in its absence be used, but that is no reason not to record. Indeed, a sophisticated prosecutor must acknowledge that there develops between a grand jury and the prosecutor with whom the jury is closeted a rapport—a dependency relationship—which can easily be turned into an instrument of influence on grand jury deliberations. Recordation is the most effective restraint upon such potential abuses."

(4) Supporting the case made by the prosecution at trial. Oakes, J., observed in *United States* v. *Cramer:* "The benefits of having grand jury testimony recorded do not all inure to the defense. See, e.g., *United States* v. *DeSisto*, 329 F.2d 929, 934: (2nd Cir.), cert. denied, 377 U.S. 979, 84 S.Ct. 1885, 12 L.Ed.2d 747 (1964) (conviction sustained in part on basis of witnesses's prior sworn testimony before grand jury)." Fed.R.Evid. 801(d)(1)(A) excludes from the category of hearsay the prior inconsistent testimony of a witness given before a grand jury. *United States* v. *Morgan*, 555 F.2d 238 (9th Cir. 1977). See also *United States* v. *Carlson*, 547 F.2d 1346 (8th Cir. 1976), admitting under Fed.R.Evid. 804(b)(5) the grand jury testimony of a witness who refused to testify at trial because of threats by the defendant.

Commentators have also supported a recording requirement. 8 Moore, Federal Practice par. 6.02[2][d] (2d ed. 1972) states: "Fairness to the defendant would seem to compel a change in the practice, particularly in view of the 1970 amendment to 18 USC § 3500 making grand jury testimony of government witnesses available at trial for purposes of impeachment. The requirement of a record may also prove salutary in controlling overreaching or improper examination of witnesses by the prosecutor." Similarly, 1 Wright, Federal Practice and Procedure—Criminal § 103 (1969), states that the present rule "ought to be changed, either by amendment or by judicial construction. The Supreme Court has emphasized the importance to the defense of access to the transcript of the grand jury proceedings [citing *Dennis*]. A defendant cannot have that advantage if the proceedings go unrecorded." American Bar Association, Report of the Special Committee on Federal Rules of Procedure, 52 F.R.D. 87, 94-95 (1971), renews the committee's 1965 recommendation "that all accusatorial grand jury proceedings either be transcribed by a reporter or recorded by electronic means."

Under proposed subdivision (e)(1), if the failure to record is unintentional, the failure to record would not invalidate subsequent judicial proceedings. Under present law, the failure to compel production of grand jury testimony where there is no record is not reversible error. See *Wyatt* v. *United States*, 388 F.2d 395 (10th Cir. 1968).

The provision that the recording or reporter's notes or any transcript prepared therefrom are to remain in the custody or control (as where the notes are in the immediate possession of a contract reporter employed by the Department of Justice) of the attorney for the government is in accord with present practice. It is specifically recognized, however, that the court in a particular case may have reason to order otherwise.

It must be emphasized that the proposed changes in rule 6(e) deal only with the recording requirement, and in no way expand the circumstances in which disclosure of the grand jury proceedings is permitted or required. "Secrecy of grand jury proceedings is not jeopardized by recordation. The making of a record cannot be equated with disclosure of its contents, and disclosure is controlled by other means." *United States* v. *Price*, 474 F.2d 1223 (9th Cir. 1973). Specifically, the proposed changes do not provide for copies of the grand jury minutes to defendants as a matter of right, as is the case in some states. See, e.g., Cal.Pen.Code § 938.1; Iowa Code Ann. § 772.4. The matter of disclosure continues to be governed by other provisions, such as rule 16(a) (recorded statements of the defendant), 18 U.S.C. § 3500 (statements of government witnesses), and the unchanged portions of rule 6(e), and the cases interpreting these provisions. See e.g., *United States* v. *Howard*, 433 F.2d 1 (5th Cir. 1970), and *Beatrice Foods Co.* v. *United States*, 312 F.2d 29 (8th Cir. 1963), concerning the showing which must be made of improper matters occurring before the grand jury before disclosure is required.

Likewise, the proposed changes in rule 6(e) are not intended to make any change regarding whether a defendant may challenge a grand jury indictment. The Supreme Court has declined to hold that defendants may challenge indictments on the ground that they are not supported by sufficient or competent evidence. *Costello* v. *United States*, 350 U.S. 359 (1956); *Lawn* v. *United States*, 355 U.S. 339 (1958); *United States* v. *Blue*, 384 U.S. 251 (1966). Nor are the changes intended to permit the defendant to challenge the conduct of the attorney for the government before the grand jury absent a preliminary factual showing of serious misconduct.

Note to Subdivision (e)(3)(C)

The sentence added to subdivision (e)(3)(C) gives express recognition to the fact that if the court orders disclosure, it may determine the circumstances of the disclosure. For example, if the proceedings are electronically recorded, the court would have discretion in an appropriate case to deny defendant the right to a transcript at government expense. While it takes special skills to make a stenographic record understandable, an electronic recording can be understood by merely listening to it, thus avoiding the expense of transcription.

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 95-354. AMENDMENTS PROPOSED BY THE SUPREME COURT

Rule 6(e) currently provides that "disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the attorneys for the government for use in the performance of their duties." Rule 54(c) defines attorneys for the government to mean "the Attorney General, an authorized assistant to the Attorney General, a United States attorney, and an authorized assistant of the United States attorney, and when applicable to cases arising under the laws of Guam, means the Attorney General of Guam. . . ."

The Supreme Court proposal would change Rule 6(e) by adding the following new language:

> For purposes of this subdivision, "attorneys for the government" includes those enumerated in Rule 54(c); it also includes such other government personnel as are necessary to assist the attorneys for the government in the performance of their duties.

It would also make a series of changes in the rule designed to make its provisions consistent with other provisions in the Rules and the Bail Reform Act of 1966.

The Advisory Committee note states that the proposed amendment is intended "to facilitate an increasing need, on the part of Government attorneys to make use of outside expertise in complex litigation". The note indicated that:

> Although case law is limited, the trend seems to be in the direction of allowing disclosure to Government personnel who assist attorneys for the Government in situations where their expertise is required. This is subject to the qualification that the matter disclosed be used only for the purposes of the grand jury investigation.

It is past history at this point that the Supreme Court proposal attracted substantial criticism, which seemed to stem more from the lack of precision in defining, and consequent confusion and uncertainty concerning, the intended scope of the proposed change than from a fundamental disagreement with the objective.

Attorneys for the Government in the performance of their duties with a grand jury must possess the au-

thority to utilize the services of other government employees. Federal crimes are "investigated" by the FBI, the IRS, or by Treasury agents and not by government prosecutors or the citizens who sit on grand juries. Federal agents gather and present information relating to criminal behavior to prosecutors who analyze and evaluate it and present it to grand juries. Often the prosecutors need the assistance of the agents in evaluating evidence. Also, if further investigation is required during or after grand jury proceedings, or even during the course of criminal trials, the Federal agents must do it. There is no reason for a barrier of secrecy to exist between the facets of the criminal justice system upon which we all depend to enforce the criminal laws.

The parameters of the authority of an attorney for the government to disclose grand jury information in the course of performing his own duties is not defined by Rule 6. However, a commonsense interpretation prevails, permitting "Representatives of other government agencies actively assisting United States attorneys in a grand jury investigation . . . access to grand jury material in the performance of their duties." Yet projected against this current practice, and the weight of case law, is the anomalous language of Rule 6(e) itself, which, in its present state of uncertainty, is spawning some judicial decisions highly restrictive of the use of government experts that require the government to "show the necessity (to the Court) for each particular person's aid rather than showing merely a general necessity for assistance, expert or otherwise" and that make Rule 6(e) orders subject to interlocutory appeal.

In this state of uncertainty, the Committee believes it is timely to redraft subdivision (e) of Rule 6 to make it clear.

Paragraph (1) as proposed by the Committee states the general rule that a grand jury, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or government personnel to whom disclosure is made under paragraph (2)(A)(ii) shall not disclose matters occurring before the grand jury, except as otherwise provided in these rules. It also expressly provides that a knowing violation of Rule 6 may be punished as a contempt of court. In addition, it carries forward the current provision that no obligation of secrecy may be imposed on any person except in accordance with this Rule.

Having stated the general rule of nondisclosure, paragraph (2) sets forth exemptions from nondisclosure. Subparagraph (A) of paragraph (2) provides that disclosure otherwise prohibited, other than the grand jury deliberations and the vote of any grand juror, may be made to an attorney for the government for use in the performance of his duty and to such personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law. In order to facilitate resolution of subsequent claims of improper disclosure, subparagraph (B) further provides that the names of government personnel designated to assist the attorney for the government shall be promptly provided to the district court and such personnel shall not utilize grand jury material for any purpose other than assisting the attorney for the government in the performance of such attorney's duty to enforce Federal criminal law. Although not expresaly required by the rule, the Committee contemplates that the names of such personnel will generally be furnished to the court before disclosure is made to them. Subparagraph (C) permits disclosure as directed by a court preliminarily to or in connection with a judicial proceeding or, at the request of the defendant, upon a showing that grounds may exist for dismissing the indictment because of matters occurring before the grand jury. Paragraph (3) carries forward the last sentence of current Rule 6(e) with the technical changes recommended by the Supreme Court.

The Rule as redrafted is designed to accommodate the belief on the one hand that Federal prosecutors should be able, without the time-consuming requirement of prior judicial interposition, to make such disclosures of grand jury information to other government personnel as they deem necessary to facilitate the performance of their duties relating to criminal law enforcement. On the other hand, the Rule seeks to allay the concerns of those who fear that such prosecutorial power will lead to misuse of the grand jury to enforce non-criminal Federal laws by (1) providing a clear prohibition, subject to the penalty of contempt and (2) requiring that a court order under paragraph (C) be obtained to authorize such a disclosure. There is, however, no intent to preclude the use of grand jury-developed evidence for civil law enforcement purposes. On the contrary, there is no reason why such use is improper, assuming that the grand jury was utilized for the legitimate purpose of a criminal investigation. Accordingly, the Committee believes and intends that the basis for a court's refusal to issue an order under paragraph (C) to enable the government to disclose grand jury information in a non-criminal proceeding should be no more restrictive than is the case today under prevailing court decisions. It is contemplated that the judicial hearing in connection with an application for a court order by the government under subparagraph (3)(C)(i) should be *ex parte* so as to preserve, to the maximum extent possible, grand jury secrecy.

Congressional Modification of Proposed Amendment

Section 2(a) of Pub. L. 95-78 provided in part that the amendment proposed by the Supreme Court [in its order of Apr. 26, 1977] to subdivision (e) of rule 6 of the Federal Rules of Criminal Procedure [subd. (e) of this rule] is approved in a modified form.

Effective Date of 1977 Amendment

Amendment of this rule by order of the United States Supreme Court on Apr. 26, 1977, modified and approved by Pub. L. 95-78, effective Oct. 1, 1977, see section 4 of Pub. L. 95-78, set out as an Effective Date of Pub. L. 95-78 note under section 3771 of this title.

Rule 7. The Indictment and the Information

[*See main edition for text of* (a) *and* (b)]

(c) Nature and Contents

[*See main edition for text of* (1)]

(2) *Criminal Forfeiture.* **No judgment of forfeiture may be entered in a criminal proceeding unless the indictment or the information shall allege the extent of the interest or property subject to forfeiture.**

[*See main edition for text of* (3); (d) *to* (f)]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

Notes of Advisory Committee on Rules

1979 Amendment

The amendment to rule 7(c)(2) is intended to clarify its meaning. Subdivision (c)(2) was added in 1972, and, as noted in the Advisory Committee Note thereto, was "intended to provide procedural implementation of the recently enacted criminal forfeiture provision of the Organized Crime Control Act of 1970, Title IX, § 1963, and the Comprehensive Drug Abuse Prevention and Control Act of 1970, Title II, § 408(a)(2)." These provisions reestablished a limited common law criminal forfeiture, necessitating the addition of subdivision (c)(2) and corresponding changes in rules 31 and 32, for at common law the defendant in a criminal forfeiture proceeding was entitled to notice, trial, and a

special jury finding on the factual issues surrounding the declaration of forefeiture which followed his criminal conviction.

Although there is some doubt as to what forfeitures should be characterized as "punitive" rather than "remedial," see Note, 62 Cornell L.Rev. 768 (1977), subdivision (c)(2) is intended to apply to those forfeitures which are criminal in the sense that they result from a special verdict under rule 31(e) and a judgment under rule 32(b)(2), and not to those resulting from a separate in rem proceeding. Because some confusion in this regard has resulted from the present wording of subdivision (c)(2), *United States* v. *Hall*, 521 F.2d 406 (9th Cir. 1975), a clarifying amendment is in order.

Rule 9. Warrant or Summons Upon Indictment or Information

(a) Issuance

Upon the request of the attorney for the government the court shall issue a warrant for each defendant named in an information supported by a showing of probable cause under oath as is required by Rule 4(a), or in an indictment. Upon the request of the attorney for the government a summons instead of a warrant shall issue. If no request is made, the court may issue either a warrant or a summons in its discretion. More than one warrant or summons may issue for the same defendant. The clerk shall deliver the warrant or summons to the marshal or other person authorized by law to execute or serve it. If a defendant fails to appear in response to the summons, a warrant shall issue.

[*See main edition for text of (b) to (d)*]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON RULES

1979 AMENDMENT

Subdivision (a) is amended to make explicit the fact that a warrant may issue upon the basis of an information only if the information or an affidavit filed with the information shows probable cause for the arrest. This has generally been assumed to be the state of the law even though not specifically set out in rule 9; see C. Wright, Federal Practice and Procedure: Criminal § 151 (1969); 8 J. Moore, Federal Practice par. 9.02[2] (2d ed. 1976).

In *Gerstein* v. *Pugh*, 420 U.S. 103 (1975), the Supreme Court rejected the contention "that the prosecutor's decision to file an information is itself a determination of probable cause that furnishes sufficient reason to detain a defendant pending trial," commenting:

> Although a conscientious decision that the evidence warrants prosecution affords a measure of protection against unfounded detention, we do not think prosecutorial judgment standing alone meets the requirements of the Fourth Amendment. Indeed, we think the Court's previous decisions compel disapproval of [such] procedure. In *Albrecht* v. *United States*, 273 U.S. 1, 5, 47 S.Ct. 250, 251, 71 L.Ed. 505 (1927), the Court held that an arrest warrant issued solely upon a United States Attorney's information was invalid because the accompanying affidavits were defective. Although the Court's opinion did not explicitly state that the prosecutor's official oath could not furnish probable cause, that conclusion was implicit in the judgment that the arrest was illegal under the Fourth Amendment.

No change is made in the rule with respect to warrants issuing upon indictments. In *Gerstein*, the Court indicated it was not disturbing the prior rule that "an indictment, 'fair upon its face,' and returned by a 'properly constituted grand jury' conclusively determines the existence of probable cause and requires issuance of an arrest warrant without further inquiry." See *Ex parte United States*, 287 U.S. 241, 250 (1932).

The provision to the effect that a summons shall issue "by direction of the court" has been eliminated because it conflicts with the first sentence of the rule, which states that a warrant "shall" issue when requested by the attorney for the government, if properly supported. However, an addition has been made providing that if the attorney for the government does not make a request for either a warrant or summons, then the court may in its discretion issue either one. Other stylistic changes ensure greater consistency with comparable provisions in rule 4.

IV. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 10. Arraignment

Arraignment shall be conducted in open court and shall consist of reading the indictment or information to the defendant or stating to him the substance of the charge and calling on him to plead thereto. He shall be given a copy of the indictment or information before he is called upon to plead.

CODIFICATION

Rule is set out in this supplement to correct typographical error in the main edition.

Rule 11. Pleas

[*See main edition for text of (a) to (d)*]

(e) Plea Agreement Procedure

[*See main edition for text of (1)*]

(2) *Notice of Such Agreement.* If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. If the agreement is of the type specified in subdivision (e)(1)(A) or (C), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subdivision (e)(1)(B), the court shall advise the defendant that if the court does not accept the recommendation or request the defendant nevertheless has no right to withdraw his plea.

[*See main edition for text of (3) to (6); (f) and (g)*]

(Amended Apr. 30, 1979, eff. Aug. 1, 1979.)

PROPOSED AMENDMENT TO SUBDIVISION (e)(6)

An amendment to subdivision (e)(6) of this rule was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed amendment shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, subdivision (e)(6) would read as follows:

(6) Inadmissibility of Pleas, Plea Discussions, and Related Statements. Except as otherwise provided in this paragraph, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:

(A) a plea of guilty which was later withdrawn;

(B) a plea of nolo contendere;

(C) any statement made in the course of any proceedings under this rule regarding either of the foregoing pleas; or

(D) any statement made in the course of plea discussions with an attorney for the government which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record, and in the presence of counsel.

NOTES OF ADVISORY COMMITTEE ON RULES

1979 AMENDMENT

Note to Subdivision (e)(2)

The amendment to rule 11(e)(2) is intended to clarify the circumstances in which the court may accept or reject a plea agreement, with the consequences specified in subdivision (e)(3) and (4). The present language has been the cause of some confusion and has led to results which are not entirely consistent. Compare *United States* v. *Sarubbi*, 416 F.Supp. 633 (D. N.J. 1976); with *United States* v. *Hull*, 413 F.Supp. 145 (E.D. Tenn. 1976).

Rule 11(e)(1) specifies three types of plea agreements, namely, those in which the attorney for the government might

(A) move for dismissal of other charges; or

(B) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding upon the court; or

(C) agree that a specific sentence is the appropriate disposition of the case.

A (B) type of plea agreement is clearly of a different order than the other two, for an agreement to recommend or not to oppose is discharged when the prosecutor performs as he agreed to do. By comparison, critical to a type (A) or (C) agreement is that the defendant receive the contemplated charge dismissal or agreed-to sentence. Consequently, there must ultimately be an acceptance or rejection by the court of a type (A) or (C) agreement so that it may be determined whether the defendant shall receive the bargained-for concessions or shall instead be afforded an opportunity to withdraw his plea. But this is not so as to a type (B) agreement; there is no "disposition provided for" in such a plea agreement so as to make the acceptance provisions of subdivision (e)(3) applicable, nor is there a need for rejection with opportunity for withdrawal under subdivision (e)(4) in light of the fact that the defendant knew the nonbinding character of the recommendation or request. *United States* v. *Henderson*, 565 F.2d 1119 (9th Cir. 1977); *United States* v. *Savage*, 561 F.2d 554 (4th Cir. 1977).

Because a type (B) agreement is distinguisable from the others in that it involves only a recommendation or request not binding upon the court, it is important that the defendant be aware that this is the nature of the agreement into which he has entered. The procedure contemplated by the last sentence of amended subdivision (e)(2) will establish for the record that there is such awareness. This provision conforms to ABA Standards Relating to Pleas of Guilty § 1.5 (Approved Draft, 1968), which provides that "the court must advise the defendant personally that the recommendations of the prosecuting attorney are not binding on the court."

Sometimes a plea agreement will be partially but not entirely of the (B) type, as where a defendant, charged with counts 1, 2 and 3, enters into an agreement with the attorney for the government wherein it is agreed that if defendant pleads guilty to count 1, the prosecutor will recommend a certain sentence as to that count and will move for dismissal of counts 2 and 3. In such a case, the court must take particular care to ensure that the defendant understands which components of the agreement inolve only a (B) type recommendation and which do not. In the above illustration, that part of the agreement which contemplates the dismissal of counts 2 and 3 is an (A) type agreement, and thus under rule 11(e) the court must either accept the agreement to dismiss these counts or else reject it and allow the defendant to withdraw his plea. If rejected, the defendant must be allowed to withdraw the plea on count 1 even if the type (B) promise to recommend a certain sentence on that count is kept, for a multi-faceted plea agreement is nonetheless a single agreement. On the other hand, if counts 2 and 3 are dismissed and the sentence recommendation is made, then the defendant is not entitled to withdraw his plea even if the sentence recommendation is not accepted by the court, for the defendant received all he was entitled to under the various components of the plea agreement.

Rule 16. Discovery and inspection

(a) Disclosure of Evidence by the Government

(1) *Information Subject to Disclosure*

[*See main edition for text of (A) and (B)*]

(C) *Documents and Tangible Objects.* Upon request of the defendant the government shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, and which are material to the preparation of his defense or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.

[*See main edition for text of (D), (2) and (3); (b) to (e)*]

CODIFICATION

Subd. (a)(1)(C) of this rule is set out in this supplement to correct typographical error in the main edition.

Rule 17. Subpoena

PROPOSED AMENDMENT TO SUBDIVISION (h)

An amendment to subdivision (h) of this rule was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed amendment shall not take effect until Dec.

1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, subdivision (h) would read as follows:

(h) Information not Subject to Subpoena

Statements made by witnesses or prospective witnesses may not be subpoenaed from the government or the defendant under this rule, but shall be subject to production only in accordance with the provisions of Rule 26.2.

TITLE V. VENUE

Rule 18. Place of Prosecution and Trial

Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON RULES

1979 AMENDMENT

This amendment is intended to eliminate an inconsistency between rule 18, which in its present form has been interpreted not to allow trial in a division other than that in which the offense was committed except as dictated by the convenience of the defendant and witnesses, *Dupoint* v. *United States*, 388 F.2d 39 (5th Cir. 1968), and the Speedy Trial Act of 1974. This Act provides:

> In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district so as to assure a speedy trial.

18 U.S.C. § 3161(a). This provision is intended to "permit the trial of a case at any place within the judicial district. This language was included in anticipation of problems which might occur in districts with statutory divisions, where it could be difficult to set trial outside the division." H.R.Rep. No. 93-1508, 93d Cong., 2d Sess. 29 (1974).

The change does not offend the venue or vicinage provisions of the Constitution. Article III, § 2, clause 3 places venue (the geographical location of the trial) "in the State where the said Crimes shall have been committed," while the Sixth Amendment defines the vicinage (the geographical location of the jurors) as "the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." The latter provision makes "no reference to a division within a judicial district." *United States* v. *James*, 528 F.2d 999 (5th Cir. 1976). "It follows a fortiori that when a district is not separated into divisions, * * * trial at any place within the district is allowable under the Sixth Amendment * * *." *United States* v. *Fernandez*, 480 F.2d 726 (2d Cir. 1973). See also *Zicarelli* v. *Gray*, 543 F.2d 466 (3d Cir. 1976) and cases cited therein.

Nor is the change inconsistent with the Declaration of Policy in the Jury Selection and Service Act of 1968, which reads:

> It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes.

28 U.S.C. § 1861. This language does not mean that the Act requires "the trial court to convene not only in the district but also in the division wherein the offense occurred," as:

> There is no hint in the statutory history that the Jury Selection Act was intended to do more than provide improved judicial machinery so that grand and petit jurors would be selected at random by the use of objective qualification criteria to ensure a representative cross section of the district or division in which the grand or petit jury sits. *United States* v. *Cates*, 485 F.2d 26 (1st Cir. 1974).

The amendment to rule 18 does not eliminate either of the existing considerations which bear upon fixing the place of trial within a district, but simply adds yet another consideration in the interest of ensuring compliance with the requirements of the Speedy Trial Act of 1974. The amendment does not authorize the fixing of the place of trial for yet other reasons. Cf. *Unitea States* v. *Fernandez*, 480 F.2d 726 (2d Cir. 1973) (court in the exercise of its supervisory power held improper the fixing of the place of trial "for no apparent reason other than the convenience of the judge").

VI. TRIAL

Rule 23. Trial by Jury or by the Court

[See main edition for text of (a)]

(b) Jury of Less than Twelve

Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences.

(c) Trial Without a Jury

In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.

(As amended July 30, 1977, Pub. L. 95-78, § 2(b), 91 Stat. 320.)

NOTES OF ADVISORY COMMITTEE ON RULES

1977 AMENDMENT

The amendment to subdivision (b) makes it clear that the parties, with the approval of the court, may enter into an agreement to have the case decided by less than twelve jurors if one or more jurors are unable or disqualified to continue. For many years the Eastern District of Virginia has used a form entitled, "Waiver of Alternate Jurors." In a substantial percentage of cases the form is signed by the defendant, his attorney, and the Assistant United States Attorney in advance of trial, generally on the morning of trial. It is handled automatically by the courtroom deputy clerk who, after completion, exhibits it to the judge.

This practice would seem to be authorized by existing rule 23(b), but there has been some doubt as to whether the pretrial stipulation is effective unless again agreed to by a defendant at the time a juror or jurors have to be excused. See 8 J. Moore, Federal Practice ¶23.04 (2d. ed. Cipes, 1969); C. Wright, Federal Practice and Procedure: Criminal § 373 (1969). The proposed amendment is intended to make clear that the pretrial stipulation is an effective waiver, which need not be renewed at the time the incapacity or disqualification of the juror becomes known.

In view of the fact that a defendant can make an effective pretrial waiver of trial by jury or by a jury of twelve, it would seem to follow that he can also effectively waive trial by a jury of twelve in situations where a juror or jurors cannot continue to serve.

As has been the practice under rule 23(b), a stipulation addressed to the possibility that some jurors may later be excused need not be open-ended. That is, the stipulation may be conditioned upon the jury not being reduced below a certain size. See, e.g., *Williams* v. *United States*, 332 F.2d 36 (7th Cir. 1964) (agreement to proceed if no more than 2 jurors excused for illness); *Rogers* v. *United States*, 319 F.2d 5 (7th Cir. 1963) (same).

Subdivision (c) is changed to make clear the deadline for making a request for findings of fact and to provide that findings may be oral. The oral findings, of course, become a part of the record, as findings of fact are essential to proper appellate review on a conviction resulting from a nonjury trial. *United States* v. *Livingston*, 459 F.2d 797 (3d Cir. 1972).

The meaning of current subdivision (c) has been in some doubt because there is no time specified within which a defendant must make a "request" that the court "find the facts specially." See, e.g., *United States* v. *Rivera*, 444 F.2d 136 (2d Cir. 1971), where the request was not made until the sentence had been imposed. In the opinion the court said:

> This situation might have raised the interesting and apparently undecided question of when a request for findings under Fed. R. Crim. P. 23(c) is too late, since Rivera's request was not made until the day after sentence was imposed. See generally *Benchwick* v. *United States*, 297 F.2d 330, 335 (9th Cir. 1961); *United States* v. *Morris*, 263 F.2d 594 (7th Cir. 1959).

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 95-354. AMENDMENTS PROPOSED BY THE SUPREME COURT

Subsection (b) of section 2 of the bill simply approves the Supreme Court proposed changes in subdivisions (b) and (c) of rule 23 for the reasons given by the Advisory Committee on Rules of Practice and Procedure to the Judicial Conference.

CONGRESSIONAL APPROVAL OF PROPOSED AMENDMENTS

Section 2(b) of Pub. L. 95-78 provided that: "The amendments proposed by the Supreme Court [in its order of Apr. 26, 1977] to subdivisions (b) and (c) of rule 23 of such Rules of Criminal Procedure [subd. (b) and (c) of this rule] are approved."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of this rule by order of the United States Supreme Court on Apr. 26, 1976, approved by Pub. L. 95-78, effective Oct. 1, 1977, see section 4 of Pub. L. 95-78, set out as an Effective Date of Pub. L. 95-78 note under section 3771 of this title.

Rule 24. Trial Jurors

CONGRESSIONAL DISAPPROVAL OF PROPOSED AMENDMENT

Section 2(c) of Pub. L. 95-78, July 30, 1977, 91 Stat. 320, effective Oct. 1, 1977, provided that: "The amendment proposed by the Supreme Court [in its order of Apr. 26, 1977] to rule 24 of such Rules of Criminal Procedure is disapproved and shall not take effect."

Rule 26.2. Production of Statements of Witnesses

PROPOSED RULE 26.2

New rule 26.2 was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed rule shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, the new rule would read as follows:

(a) Motion for Production

After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the government or the defendant and his attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.

(b) Production of Entire Statement

If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.

(c) Production of Excised Statement

If the other party claims that the statement contains matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over his objection shall be preserved by the attorney for the government, and, in the event of a conviction and an appeal by the defendant, shall be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.

(d) Recess for Examination of Statement

Upon delivery of the statement to the moving party, the court, upon application of that party, may recess proceedings in the trial for the examination of such statement and for preparation for its use in the trial.

(e) Sanction for Failure to Produce Statement

If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.

(f) Definition

As used in this rule, a "statement" of a witness means:

(1) a written statement made by the witness that is signed or otherwise adopted or approved by him;

(2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statment and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or

(3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury.

VII. JUDGMENT

Rule 32. Sentence and Judgment

[*See main edition for text of* (a) *and* (b)]

(c) Presentence Investigation

[*See main edition for text of* (1) *and* (2)]

(3) *Disclosure*

[*See main edition for text of* (A) *to* (D)]

(E) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

[*See main edition for text of* (d) *to* (f)]

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

PROPOSED AMENDMENT TO SUBDIVISION (f)

An amendment to subdivision (f) of this rule was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed amendment shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, the amendment provides for the abrogation of subdivision (f), leaving only a subdivision catchline reading:

(f) [*Revocation of probation*] [*Abrogated*]

NOTES OF ADVISORY COMMITTEE ON RULES

1979 AMENDMENT

Note to Subdivision (c)(3)(E)

The amendment to rule 32(c)(3)(E) is necessary in light of recent changes in the applicable statutes.

Rule 32.1. Revocation or Modification of Probation

PROPOSED RULE 32.1

New rule 32.1 was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed rule shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, the new rule would read as follows:

(a) Revocation of probation

(1) Preliminary hearing. Whenever a probationer is held in custody on the ground that he has violated a condition of his probation, he shall be afforded a prompt hearing before any judge, or a United States magistrate who has been given authority pursuant to 28 U.S.C. § 636 to conduct such hearings, in order to determine whether there is probable cause to hold the probationer for a revocation hearing. The probationer shall be given

(A) notice of the preliminary hearing and its purpose and of the alleged violation of probation;

(B) an opportunity to appear at the hearing and present evidence in his own behalf;

(C) upon request, the opportunity to question witnesses against him unless, for good cause, the federal magistrate decides that justice does not require the appearance of the witness; and

(D) notice of his right to be represented by counsel.

The proceedings shall be recorded stenographically or by an electronic recording device. If probable cause is found to exist, the probationer shall be held for a revocation hearing. The probationer may be released pursuant to Rule 46(c) pending the revocation hearing. If probable cause is not found to exist, the proceeding shall be dismissed.

(2) Revocation Hearing. The revocation hearing, unless waived by the probationer, shall be held within a reasonable time in the district of probation jurisdiction. The probationer shall be given

(A) written notice of the alleged violation of probation;

(B) disclosure of the evidence against him;

(C) an opportunity to appear and to present evidence in his own behalf;

(D) the opportunity to question witnesses against him; and

(E) notice of his right to be represented by counsel.

(b) Modification of Probation

A hearing and assistance of counsel are required before the terms or conditions of probation can be modified, unless the relief granted to the probationer upon his request or the court's own motion is favorable to him.

Rule 35. Correction or Reduction of Sentence

(a) Correction of Sentence

The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence

The court may reduce a sentence within 120 days after the sentence is imposed, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction. The court may also reduce a sentence upon revocation of probation as provided by law. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON RULES

1979 AMENDMENT

Rule 35 is amended in order to make it clear that a judge may, in his discretion, reduce a sentence of incarceration to probation. To the extent that this permits the judge to grant probation to a defendant who has already commenced service of a term of imprisonment, it represents a change in the law. See *United States* v. *Murray*, 275 U.S. 347 (1928) (Probation Act construed not to give power to district court to grant probation to convict after beginning of service of sentence, even in the same term of court); *Affronti* v. *United States*, 350 U.S. 79 (1955) (Probation Act construed to mean that after a sentence of consecutive terms on multiple counts of an indictment has been imposed and service of sentence for the first such term has commenced, the district court may not suspend sentence and grant probation as to the remaining term or terms). In construing the statute in *Murray* and *Affronti*, the Court concluded Congress could not have intended to make the probation provisions applicable during the entire period of incarceration (the only other conceivable interpretation of the statute), for this would result in undue duplication of the three methods of mitigating a sentence—probation, pardon and parole—and would impose upon district judges the added burden of responding to probation applications from prisoners throughout the service of their terms of imprisonment. Those concerns do not apply to the instant provisions, for the reduction may occur only within the time specified in subdivison (b). This change gives "meaningful effect" to the motion-to-reduce remedy by allowing the court "to consider all alternatives that were available at the time of imposition of the original sentence." *United States* v. *Golphin*, 362 F.Supp. 698 (W.D.Pa.1973).

Should the reduction to a sentence of probation occur after the defendant has been incarcerated more than six months, this would put into issue the applicability of 18 U.S.C. § 3651, which provides that initially the court "may impose a sentence in excess of six months and provide that the defendant be confined in a jail-type institution for a period not exceeding six months and that the execution of the remainder of the sentence be suspended and the defendant placed on probation for such period and upon such terms and conditions as the court deems best."

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Commitment to Another District

(a) Appearance Before Federal Magistrate

If a person is arrested in a district other than that in which the offense is alleged to have been committed, he shall be taken without unnecessary delay before the nearest available federal magistrate. Preliminary proceedings concerning the defendant shall be conducted in accordance with Rules 5 and 5.1, except that is no preliminary examination is held because and indictment has been returned or an information filed or because the defendant elects to have the preliminary examination conducted in the district in which the prosecution is pending, the person shall be held to answer upon a finding that he is the person named in the indictment, information or warrant. If the defendant is held to answer, he shall be held to answer in the district court in which the prosecution is pending, provided that a warrant is issued in that district if the arrest was made without a warrant, upon production of the warrant or a certified copy thereof.

(b) Statement by Federal Magistrate

In addition to the statements required by Rule 5, the federal magistrate shall inform the defendant of the provisions of Rule 20.

(c) Papers

If a defendant is held or discharged, the papers in the proceeding and any bail taken shall be transmitted to the clerk of the district court in which the prosecution is pending.

(d) Arrest of Probationer

If a person is arrested for a violation of his probation in a district other than the district of supervision, he shall be taken without unnecessary delay before the nearest available federal magistrate. The federal magistrate shall:

(1) Proceed if jurisdiction over the probationer is transferred to that district pursuant to 18 U.S.C. § 3653;

(2) Hold a prompt preliminary hearing if the alleged violation occurred in that district, and either (i) hold the probationer to answer in the district court of the district having probation supervision or (ii) dismiss the proceedings and so notify that court; or

(3) Otherwise order the probationer held to answer in the district court of the district having probation jurisdiction upon production of certified copies of the probation order, the warrant, and the application for the warrant, and upon a finding that the person before him is the person named in the warrant.

(e) Arrest for Failure to Appear

If a person is arrested on a warrant in a district other than that in which the warrant was issued, and the warrant was issued because of the failure of the person named therein to appear as required pursuant to a subpoena or the terms of his release, the person arrested shall be taken without unnessary delay before the nearest available federal magistrate. Upon production of the warrant or a certifed copy thereof and upon a finding that the person before him is the person named in the warrant, the federal magistrate shall hold the person to answer in the district in which the warrant was issued.

(f) Bail

It bail was previously fixed in another district where a warrant, information or indictment issued, the federal magistrate shall take into account the amount of bail previously fixed and the reasons set forth therefor, if any, but will not be bound by the amount of bail previously fixed. If the federal magistrate fixes bail different from that previously fixed, he shall set forth the reasons for his action in writing.

(As amended Apr. 30, 1979, eff. Aug. 1, 1979; Pub. L. 96-42, § 1(2), July 31, 1979, 93 Stat. 326.)

NOTES OF ADVISORY COMMITTEEE ON RULES

1979 AMENDMENT

This substantial revision of rule 40 abolishes the present distinction between arrest in a nearby district and arrest in a distant district, clarifies the authority of the magistrate with respect to the setting of bail where bail had previously been fixed in the other district, adds a provision dealing with arrest of a proba-

tioner in a district other than the district of supervision, and adds a provision dealing with arrest of a defendant or witness for failure to appear in another district.

Note to Subdivision (a)

Under subdivision (a) of the present rule, if a person is arrested in a nearby district (another district in the same state, or a place less than 100 miles away), the usual rule 5 and 5.1 preliminary proceedings are conducted. But under subdivision (b) of the present rule, if a person is arrested in a distant district, then a hearing leading to a warrant of removal is held. New subdivision (a) would make no distinction between these two situations and would provide for rule 5 and 5.1 proceedings in all instances in which the arrest occurs outside the district where the warrant issues or where the offense is alleged to have been committed.

This abolition of the distinction between arrest in a nearby district and arrest in a distant district rests upon the conclusion that the procedures prescribed in rules 5 and 5.1 are adequate to protect the rights of an arrestee wherever he might be arrested. If the arrest is without a warrant, it is necessary under rule 5 that a complaint be filed forthwith complying with the requirements of rule 4(a) with respect to the showing of probable cause. If the arrest is with a warrant, that warrant will have been issued upon the basis of an indictment or of a complaint or information showing probable cause, pursuant to rules 4(a) and 9(a). Under rule 5.1 dealing with the preliminary examination, the defendant is to be held to answer only upon a showing of probable cause that an offense has been committed and that the defendant committed it.

Under subdivision (a), there are two situations in which no preliminary examination will be held. One is where "an indictment has been returned or an information filed," which pursuant to rule 5(c) obviates the need for a preliminary examination. The order is where "the defendant elects to have the preliminary examination conducted in the district in which the prosecution is pending." A defendant might wish to elect that alternative when, for example, the law in that district is that the complainant and other material witnesses may be required to appear at the preliminary examination and give testimony. See *Washington* v. *Clemmer*, 339 F.2d 715 (D.C.Cir.1964).

New subdivision (a) continues the present requirement that if the arrest was without a warrant a warrant must thereafter issue in the district in which the offense is alleged to have been committed. This will ensure that in the district of anticipated prosecution there will have been a probable cause determination by a magistrate or grand jury.

Note to Subdivision (b)

New subdivision (b) follows existing subdivision (b)(2) in requiring the magistrate to inform the defendant of the provisions of rule 20 applicable in the particular case. Failure to so notify the defendant should not invalidate the proceedings.

Note to Subdivison (c)

New subdivision (c) follow existing subdivision (b)(4) as to transmittal of papers.

Note to Subdivision (d)

New subdivision (d) has no counterpart in the present rule. It provides a procedure for dealing with the situation in which a probationer is arrested in a distict other than the district of supervision, consistent with 18 U.S.C. § 3653, which provides in part:

> If the probationer shall be arrested in any district other than that in which he was last supervised, he shall be returned to the district in which the warrant was issued, unless jurisdiction over him is transferred as above provided to the district in which he is found, and in that case he shall be detained pending further proceedings in such district.

One possibility, provided for in subdivision (d)(1), is that of transferring jurisdiction over the probationer to the district in which he was arrested. This is permissible under the aforementioned statute, which provides in part:

> Whenever during the period of his probation, a probationer heretofore or hereafter placed on probation, goes from the district in which he is being supervised to another district, jurisdiction over him may be transferred, in the discretion of the court, from the court for the district from which he goes to the court for the other district, with the concurrence of the latter court. Thereupon the court for the district to which jurisdiction is transferred shall have all power with respect to the probationer that was previously possessed by the court for the district from which the transfer is made, except that the period of probation shall not be changed without the consent of the sentencing court. This process under the same conditions may be repeated whenever during the period of this probation the probationer goes from the district in which he is being supervised to another district.

Such transfer may be particularly appropriate when it is found that the probationer has now taken up residence in the district where he was arrested or where the alleged occurrence deemed to constitute a violation of probation took place in the district of arrest. In current practice, probationers arrested in a district other than that of their present supervision are sometimes unnecessarily returned to the district of their supervision, at considerable expense and loss of time, when the more appropriate course of action would have been transfer of probation jurisdiction.

Subdivision (d)(2) and (3) deal with the situation in which there is not a transfer of probation jurisdiction to the district of arrest. If the alleged probation violation occurred in the district of arrest, then, under subdivision (d)(2), the preliminary hearing provided for in rule 32.1(a)(1) is to be held in that district. This is consistent with the reasoning in *Morrissey* v. *Brewer*, 408 U.S. 471 (1972), made applicable to probation cases in *Gagnon* v. *Scarpelli*, 411 U.S. 778 (1973), where the Court stressed that often a parolee "is arrested at a place distant from the state institution, to which he may be returned before the final decision is made concerning revocation," and cited this as a factor contributing to the conclusion that due process requires "that some minimal inquiry be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest while information is fresh and sources are available." As later noted in *Gerstein* v. *Pugh*, 420 U.S. 103 (1975):

> In *Morrissey* v. *Brewer* * * * and *Gagnon* v. *Scarpelli* * * * we held that a parolee or probationer arrested prior to revocation is entitled to an informal preliminary hearing at the place of arrest, with some provision for live testimony. * * * That preliminary hearing, more than the probable cause determination required by the Fourth Amendment, serves the purpose of gathering and preserving live testimony, since the final revocation hearing frequently is held at some distance from the place where the violation occurred.

However, if the alleged violation did not occur in that district, then first-hand testimony concerning the violation is unlikely to be available there, and thus the reasoning of *Morrissey* and *Gerstein* does not call for holding the preliminary hearing in that district. In such a case, as provided in subdivision (d)(3), the probationer should be held to answer in the district court of the district having probation jurisdiction. The purpose of the proceeding there provided for is to ascertain the identity of the probationer and provide him with copies of the warrant and the application for the warrant. A probationer is subject to the reporting condition at all times and is also subject to the continuing power of the court to modify such conditions. He therefore stands subject to return back to the jurisdiction district without the necessity of conducting a

hearing in the district of arrest to determine whether there is probable cause to revoke his probation.

Note to Subdivision (e)

New subdivision (e) has no counterpart in the present rule. It has been added because some confusion currently exists as to whether present rule 40(b) is applicable to the case in which a bench warrant has issued for the return of a defendant or witness who has absented himself and that person is apprehended in a distant district. In *Bandy* v. *United States*, 408 F.2d 518 (8th Cir. 1969), a defendant, who had been released upon his personal recognizance after conviction and while petitioning for certiorari and who failed to appear as required after certiorari was denied, objected to his later arrest in New York and removal to Leavenworth without compliance with the rule 40 procedures. The court concluded:

> The short answer to *Bandy's* first argument is found in *Rush* v. *United States*, 290 F.2d 709, 710 (5 Cir. 1961): "The provisions of Rules 5 and 40, Federal Rules of Criminal Procedure, 18 U.S.C.A. may not be availed of by a prisoner in escape status * * *." As noted by Holtzoff, "Removal of Defendants in Federal Criminal Procedure", 4 F.R.D. 455, 458 (1946):
>
> > "Resort need not be had, however, to this [removal] procedure for the purpose of returning a prisoner who has been recaptured after an escape from custody. It has been pointed out that in such a case the court may summarily direct his return under its general power to issue writs not specifically provided for by statute, which may be necessary for the exercise of its jurisdiction and agreeable to the usages and principles of law. In fact, in such a situation no judicial process appears necessary. The prisoner may be retaken and administratively returned to the custody from which he escaped."
>
> Bandy's arrest in New York was pursuant to a bench warrant issued by the United States District Court for the District of North Dakota on May 1, 1962, when Bandy failed to surrender himself to commence service of his sentence on the conviction for filing false income tax refunds. As a fugitive from justice, Bandy was not entitled upon apprehension to a removal hearing, and he was properly removed to the United States Penitentiary at Leavenworth, Kansas to commence service of sentence.

Consistent with Bandy, new subdivision (e) does not afford such a person all of the protections provided for in subdivision (a). However, subdivision (e) does ensure that a determination of identity will be made before that person is held to answer in the district of arrest.

Note to Subdivision (f)

Although the matter of bail is dealt with in rule 46 and 18 U.S.C. §§ 3146 and 3148, new subdivision (f) has been added to clarify the situation in which a defendant makes his initial appearance before the United States magistrate and there is a warrant issued by a judge of a different district who has endorsed the amount of bail on the warrant. The present ambiguity of the rule is creating practical administrative problems. If the United States magistrate concludes that a lower bail is appropriate, the judge who fixed the original bail on the warrant has, on occasion, expressed the view that this is inappropriate conduct by the magistrate. If the magistrate, in such circumstances, does not reduce the bail to the amount supported by all of the facts, there may be caused unnecessary inconvenience to the defendant, and there would arguably be a violation of at least the spirit of the Bail Reform Act and the Eighth Amendment.

The Procedures Manual for United States Magistrates, issued under the authority of the Judicial Conference of the United States, provides in ch. 6, pp. 8-9:

> Where the arrest occurs in a "distant" district, the rules do not expressly limit the discretion of the magistrate in the setting of conditions of release. However, whether or not the magistrate in the district of arrest has authority to set his own bail under Rule 40, considerations of propriety and comity would dictate that the magistrate should not attempt to set bail in a lower amount than that fixed by a judge in another district. If an unusual situation should arise where it appears from all the information available to the magistrate that the amount of bail endorsed on the warrant is excessive, he should consult with a judge of his own district or with the judge in the other district who fixed the bail in order to resolve any difficulties. (Where an amount of bail is merely recommended on the indictment by the United States attorney, the magistrate has complete discretion in setting conditions of release.)

Rule 40 as amended would encourage the above practice and hopefully would eliminate the present confusion and misunderstanding.

The last sentence of subdivision (f) requires that the magistrate set forth the reasons for his action in writing whenever he fixes bail in an amount different from that previously fixed. Setting forth the reasons for the amount of bail fixed, certainly a sound practice in all circumstances, is particularly appropriate when the bail differs from that previously fixed in another district. The requirement that reasons be set out will ensure that the "considerations of propriety and comity" referred to above will be specifically taken into account.

CONGRESSIONAL MODIFICATION OF PROPOSED AMENDMENT

Section 1(2) of Pub. L. 96-42 provided in part that the amendment proposed by the Supreme Court [in its order of Apr. 30, 1979] affecting rule 40 of the Federal Rules of Criminal Procedure [this rule] would take effect on Aug. 1, 1979 as further amended by Congress.

Rule 41. Search and Seizure

(a) Authority To Issue Warrant

A search warrant authorized by this rule may be issued by a federal magistrate or a judge of a state court of record within the district wherein the property or person sought is located, upon request of a federal law enforcement officer or an attorney for the government.

(b) Property or Persons Which May Be Seized With a Warrant

A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a criminal offense; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(c) Issuance and Contents

(1) *Warrant upon affidavit.* A warrant other than a warrant upon oral testimony under paragraph (2) of this subdivision shall issue only on an affidavit or affidavits sworn to before the federal magistrate or state judge and establishing the grounds for issuing the warrant. If the federal magistrate or state judge is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property or person to be seized and naming

or describing the person or place to be searched. The finding of probable cause may be based upon hearsay evidence in whole or in part. Before ruling on a request for a warrant the federal magistrate or state judge may require the affiant to appear personally and may examine under oath the affiant and any witnesses he may produce, provided that such proceeding shall be taken down by a court reporter or recording equipment and made part of the affidavit. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall command the officer to search, within a specified period of time not to exceed 10 days, the person or place named for the property or person specified. The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime. It shall designate a federal magistrate to whom it shall be returned.

(2) *Warrant upon oral testimony.*

(A) *General rule.* If the circumstances make it reasonable to dispense with a written affidavit, a Federal magistrate may issue a warrant based upon sworn oral testimony communicated by telephone or other appropriate means.

(B) *Application.* The person who is requesting the warrant shall prepare a document to be known as a duplicate original warrant and shall read such duplicate original warrant, verbatim, to the Federal magistrate. The Federal magistrate shall enter, verbatim, what is so read to such magistrate on a document to be known as the original warrant. The Federal magistrate may direct that the warrant be modified.

(C) *Issuance.* If the Federal magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or that there is probable cause to believe that they exist, the Federal magistrate shall order the issuance of a warrant by directing the person requesting the warrant to sign the Federal magistrate s name on the duplicate original warrant. The Federal magistrate shall immediately sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued. The finding of probable cause for a warrant upon oral testimony may be based on the same kind of evidence as is sufficient for a warrant upon affidavit.

(D) *Recording and certification of testimony.* When a caller informs the Federal magistrate that the purpose of the call is to request a warrant, the Federal magistrate shall immediately place under oath each person whose testimony forms a basis of the application and each person applying for that warrant. If a voice recording device is available, the Federal magistrate shall record by means of such device all of the call after the caller informs the Federal magistrate that the purpose of the call is to request a warrant. Otherwise a stenographic or longhand verbatim record shall be made. If a voice recording device is used or a stenographic record made, the Federal magistrate shall have the record transcribed, shall certify the accuracy of the transcription, and shall file a copy of the original record and the transcription with the court. If a longhand verbatim record is made, the Federal magistrate shall file a signed copy with the court.

(E) *Contents.* The contents of a warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

(F) *Additional rule for execution.* The person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant.

(G) *Motion to suppress precluded.* Absent a finding of bad faith, evidence obtained pursuant to a warrant issued under this paragraph is not subject to a motion to suppress on the ground that the circumstances were not such as to make it reasonable to dispense with a written affidavit.

[*See main edition for text of (d) to (h)*]

(As amended July 30, 1977, Pub. L. 95-78, § 2(e), 91 Stat. 320; Apr. 30, 1979, eff. Aug. 1, 1979.)

NOTES OF ADVISORY COMMITTEE ON RULES

1977 AMENDMENT

Rule 41(c)(2) is added to establish a procedure for the issuance of a search warrant when it is not reasonably practicable for the person obtaining the warrant to present a written affidavit to a magistrate or a state judge as required by subdivision (c)(1). At least two states have adopted a similar procedure, Ariz.Rev.Stat.Ann. §§ 13-1444(c)-1445(c) (Supp. 1973); Cal.Pen. Code §§ 1526(b), 1528(b) (West Supp. 1974), and comparable amendments are under consideration in other jurisdictions. See Israel, Legislative Regulation of Searches and Seizures: The Michigan Proposals, 73 Mich.L.Rev. 221, 258-63 (1975); Nakell, Proposed Revisions of North Carolina's Search and Seizure Law, 52 N.Car.L.Rev. 277, 306-11 (1973). It has been strongly recommended that "every State enact legislation that provides for the issuance of search warrants pursuant to telephoned petitions and affidavits from police officers." National Advisory Commission on Criminal Justice Standards and Goals, Report on Police 95 (1973). Experience with the procedure has been most favorable. Miller, Telephonic Search Warrants: The San Diego Experience, 9 The Prosecutor 385 (1974).

The trend of recent Supreme Court decisions has been to give greater priority to the use of a search warrant as the proper way of making a lawful search:

> It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable. . . . This rule rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities. *Trupiano* v. *United States*, 334 U.S. 699, 705 (1948), quoted with approval in *Chimel* v. *California*, 395 U.S. 752, 758 (1969).

See also *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971); Note, Chambers v. Maroney: New Dimensions in the Law of Search and Seizure, 46 Indiana L.J. 257, 262 (1971).

Use of search warrants can best be encouraged by making it administratively feasible to obtain a warrant when one is needed. One reason for the nonuse of the warrant has been the administrative difficulties involved in getting a warrant, particularly at times of

the day when a judicial officer is ordinarily unavailable. See L. Tiffany, D. McIntyre, and D. Rotenberg, Detection of Crime 105-116 (1967); LaFave, Improving Police Performance Through the Exclusionary Rule, 30 Mo. L. Rev. 391, 411 (1965). Federal law enforcement officers are not infrequently confronted with situations in which the circumstances are not sufficiently "exigent" to justify the serious step of conducting a warrantless search of private premises, but yet there exists a significant possibility that critical evidence would be lost in the time it would take to obtain a search warrant by traditional means. See, e.g., *United States* v. *Johnson*,—F.2d—(D.C. Cir. June 16, 1975).

Subdivision (c)(2) provides that a warrant may be issued on the basis of an oral statement of a person not in the physical presence of the federal magistrate. Telephone, radio, or other electronic methods of communication are contemplated. For the warrant to properly issue, four requirements must be met:

(1) The applicant—a federal law enforcement officer or an attorney for the government, as required by subdivision (a)—must persuade the magistrate that the circumstances of time and place make it reasonable to request the magistrate to issue a warrant on the basis of oral testimony. This restriction on the issuance of a warrant recognizes the inherent limitations of an oral warrant procedure, the lack of demeanor evidence, and the lack of a written record for the reviewing magistrate to consider before issuing the warrant. See Comment, Oral Search Warrants: A New Standard of Warrant Availability, 21 U.C.L.A. Law Review 691, 701 (1974). Circumstances making it reasonable to obtain a warrant on oral testimony exist if delay in obtaining the warrant might result in the destruction or disappearance of the property [see *Chimel* v. *California*, 395 U.S. 752, 773-774 (1969) (White, dissenting); Landynski, The Supreme Court's Search for Fourth Amendment Standards: The Warrantless Search, 45 Conn. B.J. 2, 25 (1971)]; or because of the time when the warrant is sought, the distance from the magistrate of the person seeking the warrant, or both.

(2) The applicant must orally state facts sufficient to satisfy the probable cause requirement for the issuance of the search warrant. (See subdivision (c)(1).) This information may come from either the applicant federal law enforcement officer or the attorney for the government or a witness willing to make an oral statement. The oral testimony must be recorded at this time so that the transcribed affidavit will provide an adequate basis for determining the sufficiency of the evidence if that issue should later arise. See Kipperman. Inaccurate Search Warrant Affidavits as a Ground for Suppressing Evidence, 84 Harv. L. Rev. 825 (1971). It is contemplated that the recording of the oral testimony will be made by a court reporter, by a mechanical recording device, or by a verbatim contemporaneous writing by the magistrate. Recording a telephone conversation is no longer difficult with many easily operated recorders available. See 86:2 L.A. Daily Journal 1 (1973); Miller, Telephonic Search Warrants: The San Diego Experience, 9 The Prosecutor 385, 386 (1974).

(3) The applicant must read the contents of the warrant to the federal magistrate in order to enable the magistrate to know whether the requirements of certainty in the warrant are satisfied. The magistrate may direct that changes be made in the warrant. If the magistrate approves the warrant as requested or as modified by the magistrate, he then issues the warrant by directing the applicant to sign the magistrate's name to the duplicate original warrant. The magistrate then causes to be made a written copy of the approved warrant. This constitutes the original warrant. The magistrate enters the time of issuance of the duplicate original warrant on the face of the original warrant.

(4) Return of the duplicate original warrant and the original warrant must conform to subdivision (d). The transcript of the sworn oral testimony setting forth the grounds for issuance of the warrant must be signed by affiant in the presence of the magistrate and filed with the court.

Because federal magistrates are likely to be accessible through the use of the telephone or other electronic devices, it is unnecessary to authorize state judges to issue warrants under subdivision (c)(2).

Although the procedure set out in subdivision (c)(2) contemplates resort to technology which did not exist when the Fourth Amendment was adopted, the Advisory Committee is of the view that the procedure complies with all of the requirements of the Amendment. The telephonic search warrant process has been upheld as constitutional by the courts, e.g., *People* v. *Peck*, 38 Cal.App.3d 993, 113 Cal.Rptr. 806 (1974), and has consistently been so viewed by commentators. See Israel, Legislative Regulation of Searches and Seizures: The Michigan Proposals, 73 Mich. L.Rev. 221, 260 (1975); Nakell, Proposed Revisions of North Carolina's Search and Seizure Law, 52 N.Car.L.Rev. 277, 310 (1973); Comment, Oral Search Warrants: A New Standard of Warrant Availability, 21 U.C.L.A. Rev. 691, 697 (1973).

Reliance upon oral testimony as a basis for issuing a search warrant is permissible under the Fourth Amendment. *Campbell* v. *Minnesota*, 487 F.2d 1 (8th Cir. 1973); *United States ex rel. Gaugler* v. *Brierley*, 477 F.2d 516 (3d Cir. 1973); *Tabasko* v. *Barton*, 472 F.2d 871 (6th Cir. 1972); *Frazier* v. *Roberts*, 441 F.2d 1224 (8th Cir. 1971). Thus, the procedure authorized under subdivision (c)(2) is not objectionable on the ground that the oral statement is not transcribed in advance of the issuance of the warrant. *People* v. *Peck*, 38 Cal. App. 3d 993, 113 Cal.Rptr. 806 (1974). Although it has been questioned whether oral testimony will suffice under the Fourth Amendment if some kind of contemporaneous record is not made of that testimony, see dissent from denial of certiorari in *Christofferson* v. *Washington*, 393 U.S. 1090 (1969), this problem is not present under the procedure set out in subdivision (c)(2).

The Fourth Amendment requires that warrants issue "upon probable cause, supported by Oath or affirmation." The significance of the oath requirement is "that someone must take the responsibility for the facts alleged, giving rise to the probable cause for the issuance of a warrant." *United States ex rel. Pugh* v. *Pate*, 401 F.2d 6 (7th Cir. 1968); See also *Frazier* v. *Roberts*, 441 F.2d 1224 (8th Cir. 1971). This is accomplished under the procedure required by subdivision (c)(2); the need for an oath under the Fourth Amendment does not "require a face to face confrontation between the magistrate and the affiant." *People* v. *Chavaz*, 27 Cal. App. 3d 883, 104 Cal. Rptr. 247 (1972). See also *People* v. *Aguirre*, 26 Cal. App. 3d 7, 103 Cal. Rptr. 153 (1972), noting it is unnecessary that "oral statements [be] taken in the physical presence of the magistrate."

The availability of the procedure authorized by subdivision (c)(2) will minimize the necessity of federal law enforcement officers engaging in other practices which, at least on occasion, might threaten to a greater extent those values protected by the Fourth Amendment. Although it is permissible for an officer in the field to relay his information by radio or telephone to another officer who has more ready access to a magistrate and who will thus act as the affiant, *Lopez* v. *United States*, 370 F.2d 8 (5th Cir. 1966); *State* v. *Banks*, 250 N.C. 728, 110 S.E.2d 322 (1959), that procedure is less desirable than that permitted under subdivision (c)(2), for it deprives "the magistrate of the opportunity to examine the officer at the scene, who is in a much better position to answer questions relating to probable cause and the requisite scope of the search." Israel, Legislative Regulation of Searches and Seizures: The Michigan Proposals, 73 Mich.L.Rev. 221, 260 (1975). Or, in the absence of the subdivision (c)(2) procedure, officers might take "protective custody" of the premises and occupants for a significant period of time while a search warrant was sought by traditional means. The extent to which the "protective custody"

procedure may be employed consistent with the Fourth Amendment is uncertain at best; see Griswold, Criminal Procedure, 1969—Is It a Means or an End?, 29 Md.L.Rev. 307, 317 (1969). The unavailability of the subdivision (c)(2) procedure also makes more tempting an immediate resort to a warrantless search in the hope that the circumstances will later be found to have been sufficiently "exigent" to justify such a step. See Miller, Telephonic Search Warrants: The San Diego Experience, 9 The Prosecutor 385, 386 (1974), noting a dramatic increase in police utilization of the warrant process following enactment of a telephonic warrant statute.

1979 AMENDMENT

This amendment to Rule 41 is intended to make it possible for a search warrant to issue to search *for* a person under two circumstances: (i) when there is probable cause to arrest that person; or (ii) when that person is being unlawfully restrained. There may be instances in which a search warrant would be required to conduct a search in either of these circumstances. Even when a search warrant would not be required to enter a place to search for a person, a procedure for obtaining a warrant should be available so that law enforcement officers will be encouraged to resort to the preferred alternative of acquiring "an objective predetermination of probable cause" *Katz* v. *United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967), in this instance, that the person sought is at the place to be searched.

That part of the amendment which authorizes issuance of a search warrant to search for a person unlawfully restrained is consistent with ALI Model Code of Pre-Arraignment Procedure § SS 210.3(1)(d) (Proposed Official Draft, 1975), which specifies that a search warrant may issue to search for "an individual * * * who is unlawfully held in confinement or other restraint." As noted in the Commentary thereto, id. at p. 507:

Ordinarily such persons will be held against their will and in that case the persons are, of course, not subject to "seizure." But they are, in a sense, "evidence" of crime, and the use of search warrants for these purposes presents no conceptual difficulties.

Some state search warrant provisions also provide for issuance of a warrant in these circumstances. See, e. g., Ill.Rev. Stat. ch. 38, § 108-3 ("Any person who has been kidnapped in violation of the laws of this State, or who has been kidnapped in another jurisdiction and is now concealed within this State").

It may be that very often exigent circumstances, especially the need to act very promptly to protect the life or well-being of the kidnap victim, would justify an immediate warrantless search for the person restrained. But this is not inevitably the case. Moreover, as noted above there should be available a process whereby law enforcement agents may acquire in advance a judicial determination that they have cause to intrude upon the privacy of those at the place where the victim is thought to be located.

That part of the amendment which authorizes issuance of a search warrant to search for a person to be arrested is also consistent with ALI Model Code of Pre-Arraignment Procedure § SS 210.3(1)(d) (Proposed Official Draft, 1975), which states that a search warrant may issue to search for "an individual for whose arrest there is reasonable cause." As noted in the Commentary thereto, id. at p. 507, it is desirable that there be "explicit statutory authority for such searches." Some state search warrant provisions also expressly provide for the issuance of a search warrant to search for a person to be arrested. See, e. g., Del.Code Ann. tit. 11, § 2305 ("Persons for whom a warrant of arrest has been issued"). This part of the amendment to Rule 41 covers a defendant or witness for whom an arrest warrant has theretofore issued, or a defendant for whom grounds to arrest exist even though no arrest warrant has theretofore issued. It also covers the arrest of a deportable alien under 8 U.S.C. § 1252, whose presence at a certain place might be important evidence of criminal conduct by another person, such as the harboring of undocumented aliens under 8 U.S.C. § 1324(a)(3).

In *United States* v. *Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976), the Court once again alluded to "the still unsettled question" of whether, absent exigent circumstances, officers acting without a warrant may enter private premises to make an arrest. Some courts have indicated that probable cause alone ordinarily is sufficient to support an arrest entry. *United States* v. *Fernandez*, 480 F.2d 726 (2d Cir. 1973); *United States ex rel. Wright* v. *Woods*, 432 F.2d 1143 (7th Cir. 1970). There exists some authority, however, that except under exigent circumstances a warrant is required to enter the defendant's own premises, *United States* v. *Calhoun*, 542 F.2d 1094 (9th Cir. 1976); *United States* v. *Lindsay*, 506 F.2d 166 (D.C.Cir.1974); *Dorman* v. *United States*, 435 F.2d 385 (D.C.Cir.1970), or, at least, to enter the premises of a third party, *Virgin Islands* v. *Gereau*, 502 F.2d 914 (3d Cir. 1974); *Fisher* v. *Volz*, 496 F.2d 333 (3d Cir. 1974); *Huotari* v. *Vanderport*, 380 F.Supp. 645 (D.Minn. 1974).

It is also unclear, assuming a need for a warrant, what kind of warrant is required, although it is sometimes assumed that an arrest warrant will suffice, e. g., *United States* v. *Calhoun*, supra; *United States* v. *James*, 528 F.2d 999 (5th Cir. 1976. There is a growing body of authority, however, that what is needed to justify entry of the premises of a third party to arrest is a search warrant, e. g., *Virgin Islands* v. *Gereau*, supra; *Fisher* v. *Volz*, supra. The theory is that if the privacy of this third party is to be protected adequately, what is needed is a probable cause determination by a magistrate that the wanted person is presently within that party's premises. "A warrant for the arrest of a suspect may indicate that the police officer has probable cause to believe the suspect committed the crime; it affords no basis to believe the suspect is in some stranger's home." *Fisher* v. *Volz*, supra.

It has sometimes been contended that a search warrant should be required for a nonexigent entry to arrest even when the premises to be entered are those of the person to be arrested. Rotenberg & Tanzer, Searching for the Person to be Seized, 35 Ohio St.L.J. 56, 69 (1974). Case authority in support is lacking, and it may be that the protections of a search warrant are less important in such a situation because ordinarily "rudimentary police procedure dictates that a suspect's residence be eliminated as a possible hiding place before a search is conducted elsewhere." *People* v. *Sprovieri*, 95 Ill. App.2d 10, 238 N.E.2d 115 (1968).

Despite these uncertainies, the fact remains that in some circuits under some circumstances a search warrant is required to enter private premises to arrest. Moreover, the law on this subject is in a sufficient state of uncertainty that this position may be taken by other courts. It is thus important that Rule 41 clearly express that a search warrant for this purpose may issue. And even if future decisions head the other direction, the need for the amendment would still exist. It is clear that law enforcement officers "may not constitutionally enter the home of a private individual to search for another person, though he be named in a valid arrest warrant in their possession, absent probable cause to believe that the named suspect is present within at the time." *Fisher* v. *Volz*, supra. The cautious officer is entitled to a procedure whereby he may have this probable cause determination made by a neutral and detached magistrate in advance of the entry.

NOTES OF COMMITTEE ON THE JUDICIARY, SENATE REPORT NO. 95-354. AMENDMENTS PROPOSED BY THE SUPREME COURT

The committee agrees with the Supreme Court that it is desirable to encourage Federal law enforcement officers to seek search warrants in situations where they might otherwise conduct warrantless searches by

providing for a telephone search warrant procedure with the basic characteristics suggested in the proposed Rule 41(c)(2). As the Supreme Court has observed, "It is a cardinal rule that, in seizing goods and articles, law enforcement agents must secure and use search warrants whenever reasonably practicable." After consideration of the Supreme Court version and a proposal set forth in H.R. 7888, the committee decided to use the language of the House bill as the vehicle, with certain modifications.

A new provision, as indicated in subparagraph (c)(2)(A), is added to establish a procedure for the issuance of a search warrant where the circumstances make it reasonable to dispense with a written affidavit to be presented in person to a magistrate. At least two States have adopted a similar procedure—Arizona and California—and comparable amendments are under consideration in other jurisdictions. Such a procedure has been strongly recommended by the National Advisory Commission on Criminal Justice Standards and Goals and State experience with the procedure has been favorable. The telephone search warrant process has been upheld as constitutional by the courts and has consistently been so viewed by commentators.

In recommending a telephone search warrant procedure, the Advisory Committee note on the Supreme Court proposal points out that the preferred method of conducting a search is with a search warrant. The note indicates that the rationale for the proposed change is to encourage Federal law enforcement officers to seek search warrants in situations when they might otherwise conduct warrantless searches. "Federal law enforcement officers are not infrequently confronted with situations in which the circumstances are not sufficiently 'exigent' to justify the serious step of conducting a warrantless search of private premises, but yet there exists a significant possibility that critical evidence would be lost in the time it would take to obtain a search warrant by traditional means."

Subparagraph (c)(2)(B) provides that the person requesting the warrant shall prepare a "duplicate original warrant" which will be read and recorded verbatim by the magistrate on an "original warrant." The magistrate may direct that the warrant be modified.

Subparagraph (c)(2)(C) provides that, if the magistrate is satisfied that the circumstances are such as to make it reasonable to dispense with a written affidavit and that grounds for the application exist or there is probable cause to believe that they exist, he shall order the issuance of the warrant by directing the requestor to sign the magistrate's name on the duplicate original warrant. The magistrate is required to sign the original warrant and enter the time of issuance thereon. The finding of probable cause may be based on the same type of evidence appropriate for a warrant upon affidavit.

Subparagraph (c)(2)(D) requires the magistrate to place the requestor and any witness under oath and, if a voice recording device is available, to record the proceeding. If a voice recording is not available, the proceeding must be recorded verbatim stenographically or in longhand. Verified copies must be filed with the court as specified.

Subparagraph (c)(2)(E) provides that the contents of the warrant upon oral testimony shall be the same as the contents of a warrant upon affidavit.

Subparagraph (c)(2)(F) provides that the person who executes the warrant shall enter the exact time of execution on the face of the duplicate original warrant. Unlike H.R. 7888, this subparagraph does not require the person who executes the warrant to have physical possession of the duplicate original warrant at the time of the execution of the warrant. The committee believes this would make an unwise and unnecessary distinction between execution of regular warrants issued on written affidavits and warrants issued by telephone that would limit the flexibility and utility of this procedure for no useful purpose.

Finally, subparagraph (c)(2)(G) makes it clear that, absent a finding of bad faith by the government, the magistrate's judgment that the circumstances made it reasonable to dispense with a written affidavit—a decision that does not go to the core question of whether there was probable cause to issue a warrant—is not a ground for granting a motion to suppress evidence.

Congressional Modification of Proposed Amendment

Section 2(e) of Pub. L. 95-78 provided in part that the amendment by the Supreme Court [in its order of Apr. 26, 1976] to subdivision (c) of rule 41 of the Federal Rules of Criminal Procedure [subd. (c) of this rule] is approved in a modified form.

Effective Date of 1977 Amendment

Amendment of this rule by order of the United States Supreme Court on Apr. 26, 1976, modified and approved by Pub. L. 95-78, effective Oct. 1, 1977, see section 4 of Pub. L. 95-78, set out as an Effective Date of Pub. L. 95-78 note under section 3771 of this title.

TITLE X. GENERAL PROVISIONS

Rule 44. Right to and Assignment of Counsel

Proposed Amendment to Subdivision (c)

An amendment to subdivision (c) of this rule was proposed by the United States Supreme Court and transmitted to Congress on Apr. 30, 1979, to become effective Aug. 1, 1979. Pub. L. 96-42, July 31, 1979, 93 Stat. 326, provided in part that the proposed amendment shall not take effect until Dec. 1, 1980, or until and then only to the extent approved by Act of Congress, whichever is earlier.

As thus proposed, subdivision (c) would read as follows:

(c) *Joint Representation*

Whenever two or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such join representation and shall personally advise each defendant of his right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

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